

In the Supreme Court of the  
United States

OCTOBER TERM, 1971

No. 71-708

PAUL J. TRAFFICANTE, DOROTHY M. CARR, COMMITTEE  
OF PARKMERCED RESIDENTS COMMITTED TO OPEN OC-  
CUPANCY, an unincorporated association; THE REV-  
EREND ARTHUR H. NEWBERG, JAMES EMBREE, ALBERT  
JAMES HEICK, and JAQUELINE TCHAKALIAN,

*Petitioners,*

vs.

METROPOLITAN LIFE INSURANCE COMPANY, a New  
York Corporation, and PARKMERCED CORPORATION,  
a California Corporation,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

**Brief of Respondents Metropolitan Life Insurance  
Company and Parkmerced Corporation in Opposition**

ROBERT M. SHEA  
THOMAS B. DONOVAN  
DINKELSPIEL, STEEFEL,  
LEVITT, WEISS & DONOVAN  
235 Montgomery Street,  
San Francisco, CA. 94104  
Telephone: (415) 391-3900

*Attorneys for  
Respondent  
Parkmerced  
Corporation*

RICHARD J. KILMARTIN  
JOHN H. RIORDAN, SR.  
KNIGHT, BOLAND & RIORDAN  
465 California Street  
San Francisco, CA. 94104  
Telephone: (415) 362-0684

*Attorneys for  
Respondent  
Metropolitan Life  
Insurance Company*

Supreme Court, U.S.

FILED

DEC 27 1971

E. ROBERT SEAVER, CLERK

PETITION NOT PRINTED  
REPLY BRIEF NOT PRINTED

1772-1773

1772

1773

1774

1775

1776

1777

1778

1779

1780

1781

1782

1783

1784

1785

1786

1787

1788

1789

1790

1791

1792

1793

1794



## TABLE OF CONTENTS

	Page
Opinions Below .....	1
Jurisdiction .....	2
Question Presented .....	2
Statutes Involved .....	2
Statement .....	2
Argument .....	4
I. The Case Lacks Importance.....	5
1. The Claims of Discrimination in This Case Will Be Judicially Reviewed in Another Action Filed by Proper Plaintiffs.....	5
2. This Case Is Meaningless in the Context of the Civil Rights Acts.....	6
3. Denial of the Petition Will Have No Impact on Enforcement of Title VIII.....	6
4. The Case Is Moot.....	7
II. The Decision Below Was Clearly Correct.....	7
1. The History and Language of Title VIII.....	7
2. The "Injury" Asserted by Petitioners Is Not Cognizable Under the Statutes.....	9
3. Administrative Agencies Cannot Confer Standing Where None Exists .....	9
(i) The Department of Housing and Urban Development ("HUD") .....	9
(ii) The Department of Justice.....	10
III. There Is No Conflict of Decisions.....	10
Conclusion .....	11

# TABLE OF AUTHORITIES CITED

CASES	Pages
Barrows v. Jackson, 346 U.S. 249 (1953) .....	10
Bowe v. Colgate-Palmolive Co., 416 F.2d 711 (1969)....	11
Data Processing Service v. Camp, 397 U.S. 150.....	9
Hutchings v. United States Industries, Inc., 428 F.2d 303 (1970) .....	10
Jenkins v. United Gas Corporation, 400 F.2d 28 (1969) .....	10
Jones v. Mayer, 392 U.S. 409 (1968).....	6
Kennedy Park Homes Association v. City of Lacka- wanna, N. Y., 436 F.2d 108 (C.A. 2 1970) cert. denied 401 U.S. 1010 (1971).....	11
Lee v. Nyquist, 318 F.Supp. 710 (W.D.N.Y. 1970) aff'd ..... U.S. .... [29 L.Ed.2d 105].....	11
Marable v. Alabama Mental Health Board, 297 F. Supp. 291 (1969).....	10
Miller v. Amusement Enterprises, Inc., 426 F.2d 534 (1970) .....	10, 11
Newman v. Piggie Park Enterprises, 390 U.S. 400 (1968) .....	10
Scenic Hudson Preservation Conference v. FPC, 354 F.2d 608 (C.A. 2 1965).....	11
Shannon v. HUD, 436 F.2d 809 (C.A. 3 1970) affirming 305 F.Supp. 205.....	11
Shelley v. Kraemer, 334 U.S. 1 (1947).....	10
Sullivan v. Little Hunting Park, 396 U.S. 229 (1969)....	10

# TABLE OF AUTHORITIES CITED

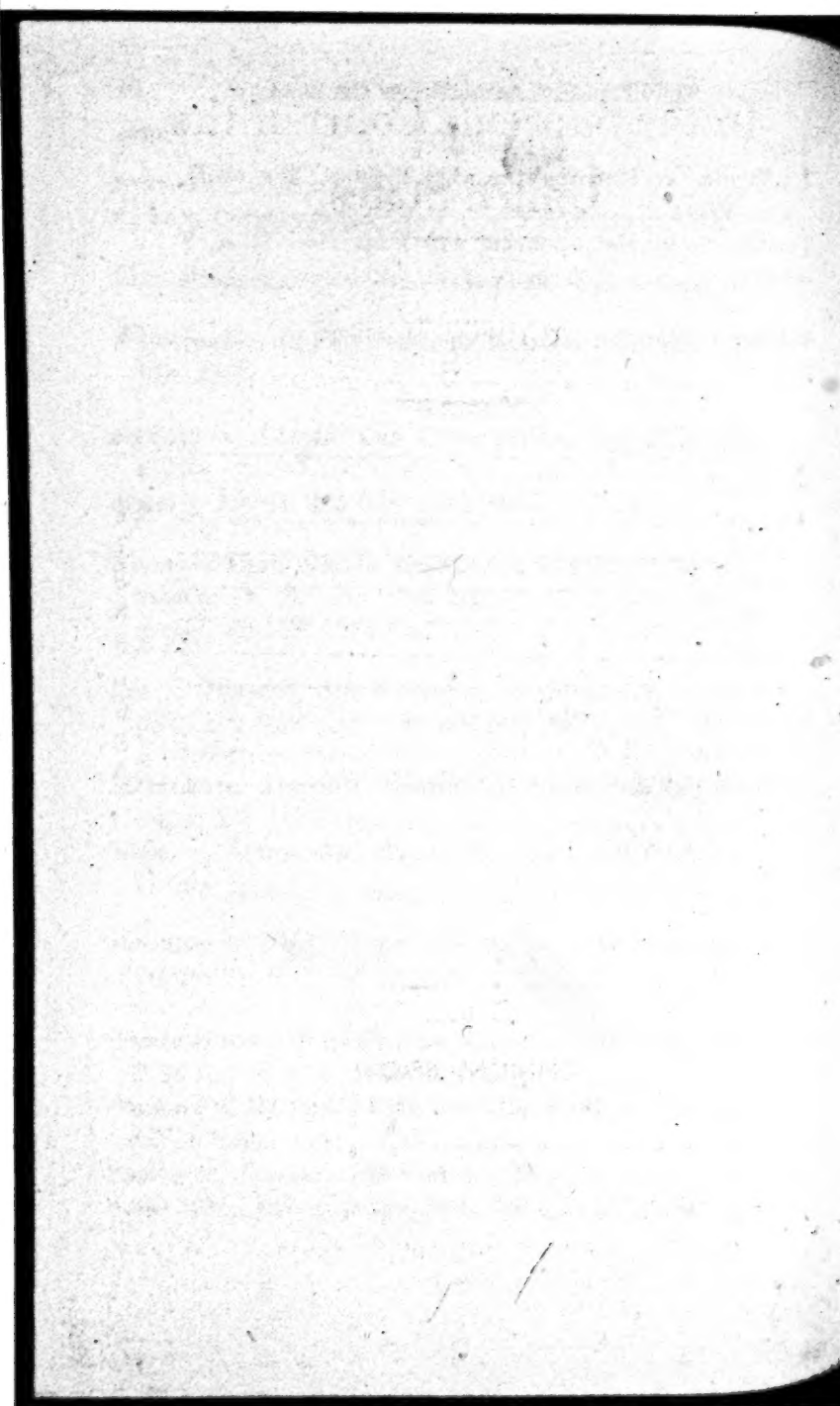
iii

## Pages

Trafficante v. Metropolitan, 322 F.Supp. 352 (N.D. Cal. 1971) .....	1
Trafficante v. Metropolitan, 446 F.2d 1158 (C.A. 9 1971) .....	1
Walker v. Pointer, 304 F.Supp. 56 (1969).....	10

## STATUTES

28 U.S.C. § 1254(1) .....	2
42 U.S.C.:	
§ 1982 .....	2, 4
§ 3601 .....	7
§ 3602 .....	8
§ 3604 .....	8
§ 3610 .....	3, 8, 9
§ 3612 .....	8
California Civil Code § 51.....	3
California Civil Code § 52.....	3
California Health & Safety Code § 35700.....	3



# In the Supreme Court of the United States

---

OCTOBER TERM, 1971

---

No. 71-708

---

PAUL J. TRAFFICANTE, DOROTHY M. CARR, COMMITTEE  
OF PARKMERCED RESIDENTS COMMITTED TO OPEN OC-  
CUPANCY, an unincorporated association; THE REV-  
EREND ARTHUR H. NEWBERG, JAMES EMBREE, ALBERT  
JAMES HEICK, and JAQUELINE TCHAKALIAN,  
*Petitioners,*

vs.

METROPOLITAN LIFE INSURANCE COMPANY, a New  
York Corporation, and PARKMERCED CORPORATION,  
a California Corporation,  
*Respondents.*

---

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

---

**Brief of Respondents Metropolitan Life Insurance  
Company and Parkmerced Corporation in Opposition**

---

## OPINIONS BELOW

The opinion of the District Court for the Northern Dis-  
trict of California (Appendix A hereto) dismissing the  
Complaint and Complaint in Intervention is reported at 322  
F.Supp. 352 (N.D. Cal. 1971). The opinion of the Court of  
Appeals for the Ninth Circuit (Appendix A of the Petition)  
affirming the Judgment of Dismissal is reported at 446 F.2d  
1158 (C.A. 1971).

## JURISDICTION

The Judgment of the Court of Appeals for the Ninth Circuit was entered on August 6, 1971. On September 13, 1971, the Court of Appeals denied a timely petition for rehearing *en banc*. A copy of the Order is attached hereto as Appendix B. The jurisdiction of this Court is invoked by petitioners under 28 U.S.C. § 1254(1).

## QUESTION PRESENTED

Do tenants of an apartment complex, against whom no act of discrimination has been practiced and who have not been deprived of the right to lease real property, have standing under the Fair Housing Act (Title VIII of the Civil Rights Act of 1968; P.L. 90-284; 42 U.S.C. § 3601, et seq.) or 42 U.S.C. § 1982 to maintain an action against their former or present landlord for alleged acts of discrimination against others?

## STATUTES INVOLVED

The statutes involved are Title VIII (Fair Housing) of the Civil Rights Act of 1968 (P.L. 90-284; 42 U.S.C. § 3601, et seq.) and 42 U.S.C. § 1982. These statutes are set forth in Appendix C hereto.

## STATEMENT

This action is allegedly predicated upon the Fair Housing Act of 1968 and 42 U.S.C. § 1982. In their Complaints the petitioners, all residents of the Parkmerced apartment complex in San Francisco,<sup>1</sup> have charged respondents with

---

1. Except the Committee of Parkmerced Residents Committed to Open Occupancy. It is alleged that the Committee is an unincorporated association, all of whose members are residents of Parkmerced. The number of members of the Committee is not disclosed by the record below.

a variety of discriminatory practices against others in connection with the operation of Parkmerced but not against themselves.

At the time the original Complaint was filed Parkmerced was owned by Metropolitan Life Insurance Company ("Metropolitan"). On December 21, 1970, Metropolitan sold the buildings and leased the land constituting Parkmerced to Parkmerced Corporation in a bona fide arm's length transaction. Metropolitan has no ownership interest of any kind, direct or indirect, in Parkmerced Corporation and by reason of the sale was divested of all management rights in the complex. Since that date Parkmerced has been operated by the purchaser. Parkmerced Corporation was promptly joined as a defendant in the action. Prior to the sale Metropolitan had moved to dismiss the Complaint on the dual grounds that the petitioners lacked standing to maintain the action and that the Federal Court lacked subject matter jurisdiction.<sup>2</sup> At the time of the sale of Parkmerced, Metropolitan supplemented its Motion to Dismiss to assert that the action had become moot by reason of the sale. Parkmerced Corporation also moved to dismiss the Complaints.<sup>3</sup>

On February 10, 1971, the District Court dismissed the Complaint on the ground that the plaintiffs lacked standing

---

2. This contention, which has not been abandoned, was predicated upon § 810(d) of the Fair Housing Act (42 U.S.C. § 3610(d)) which prohibits federal jurisdiction if the person aggrieved has a judicial remedy under a state or local fair housing law providing substantially equivalent rights and remedies as the Fair Housing Act. It was contended by respondent that the California Rumford Act (Cal. H. & S. Code §§ 35700, *et seq.*) and the Unruh Civil Rights Act (Cal. Civ. Code §§ 51, 52) provided such rights and remedies and that accordingly federal jurisdiction was not present.

3. In addition to the ground of standing Parkmerced Corporation asserted, and still asserts, that it, as a purchaser in no way connected with the alleged discriminatory housing practices, should not be subjected to the risk and expense of litigation for any relief which might be decreed.



to maintain the action. In so doing the Court observed that petitioners " . . . do not allege, nor can they, that they themselves have been denied any of the rights guaranteed by Title VIII or 42 U.S.C. section 1982 to purchase or rent real property" (App. A at 2). The Court of Appeals unanimously affirmed the judgment of the District Court. After a thorough examination and analysis of Title VIII and its Congressional history, the Court stated:

"We find nothing in the Congressional discussion or debate to suggest that Congress intended to grant standing to sue to any private persons other than the direct victims of discriminatory housing practices proscribed by the Act." (App. A to Petition at 8.)

With respect to the petitioners' § 1982 claims, the Court further held:

"We find nothing in *Jones v. Mayer* [392 U.S. 409 (1968)] to indicate that section 1982 would be construed to grant standing to sue to anyone other than a person who was the victim of racial discrimination in the sale or rental of property." (App. A to Petition at 9.)

Neither the District Court nor the Court of Appeals reached the jurisdictional, mootness or successor in interest questions.

### ARGUMENT

The issue presented by this case is so singularly lacking in importance and significance, national or otherwise, and is so narrow and restricted it would be difficult to conceive of a case less eligible for review by this Court. The decision below has no impact whatever upon the national housing policy or any of the Civil Rights Acts but affects only the six named petitioners. A virtually identical case is now pending in the District Court in San Francisco in which the plaintiffs, whose standing to sue has not been chal-



lenged, are represented by the same attorneys representing petitioners here. The decisions of the lower courts were clearly correct and fully consistent with decisions of this Court. The litigation in which the petitioners seek to engage has not only not been authorized, expressly or impliedly, by the relevant statutes but has become moot by reason of the sale of Parkmerced.

## I.

### THE CASE LACKS IMPORTANCE

#### 1. **The Claims of Discrimination in This Case Will Be Judicially Reviewed in Another Action Filed by Proper Plaintiffs**

The District Court dismissed this action on February 10, 1971. On February 25, 1971, petitioners' attorneys filed a Complaint entitled "Charles Burbridge [et al.] vs. Parkmerced Corporation and Metropolitan Life Insurance Company," (U.S.D.C. N.D. Cal C-71 378) a copy of which is attached hereto as Appendix D. That case is now pending, the defendants have answered, and discovery procedures are being pursued by the parties. The plaintiffs, all Negroes, allege that they are the direct victims of discriminatory housing practices which resulted in their exclusion from Parkmerced and accordingly their standing to maintain the action has not been challenged. The charging allegations of that case, which purports to be a *class action*, are virtually identical to the Complaint in this case. Accordingly the discrimination claims will be judicially examined. The pendency of *Burbridge* demonstrates not only the lack of necessity for review of this case but provides compelling evidence that neither the national housing policy nor any of the Civil Rights Acts will be subverted by denying these petitioners, against whom no act of discrimination has been practiced, standing to sue. Petitioners' contention that they are somehow the most appropriate persons to bring the action is dissolved by *Burbridge*.

## **2. This Case Is Meaningless in the Context of the Civil Rights Acts**

As noted, this case involves six plaintiffs and a committee suing in their own right only. The case is not and does not purport to be a *class action*. None of the plaintiffs has been denied housing. A judgment in this action would be meaningless and inconclusive. It would not be binding upon persons not parties to the action who were in any way dissatisfied with the result. It was not the intention of Congress in enacting the Civil Rights Act to require private landlords to litigate their practices, procedures or social views with any tenant who happened to disagree with them. Granting petitioners standing would not only seriously detract from the detailed and efficient enforcement machinery contained in the Fair Housing Act but would unreasonably and unnecessarily expose every landlord to the possibility of vexatious suits by any tenant with an imagined grievance.

## **3. Denial of the Petition Will Have No Impact on Enforcement of Title VIII**

The petitioners' claim to standing is of no national importance and denial of their claim will have no impact whatever upon enforcement of Title VIII. In *Jones v. Mayer*, 392 U.S. 409 (1968), this Court described the Fair Housing Act as a:

“• • • detailed housing law, applicable to a broad range of discriminatory practices and enforceable by a complete arsenal of federal authority.”

The arsenal includes well defined administrative and judicial remedies for private persons against whom acts of discrimination have been practiced and a broad range of remedial powers vested in the Attorney General. The arsenal simply does not include meaningless lawsuits by

volunteers. None of the remedies of the Act will be in any way limited, decreased, restricted or otherwise affected by denial of the petition. It is patently unnecessary to grant petitioners standing in order to vindicate any policy or statute of the United States.

#### **4. The Case is Moot.**

The sale of Parkmerced by Metropolitan has rendered the case moot and deprived it of any arguable element of significance. There is no reasonable or foreseeable possibility of a continuance by Metropolitan of the acts complained of. While petitioners challenged Metropolitan's claim to mootness in the courts below they did concede that "a court would have difficulty in enforcing an affirmative action order against a seller who no longer controlled the rental offices or the business operations of the project \* \* \*." It would be idle for a court to enter an injunction against a party with which it would be powerless to comply. The plaintiffs' prayer for damages cannot rescue the case from the mootness doctrine because their claim for damages is not cognizable by the relevant statutes.<sup>4</sup>

## **II.**

### **THE DECISION BELOW WAS CLEARLY CORRECT**

The decision of the Court below was rendered after a thorough examination of the Congressional history of the Fair Housing Act and full consideration of the extensive briefs filed by the parties. The decision is clearly correct.

#### **1. The History and Language of Title VIII**

The Congressional history and purpose of the Fair Housing Act are well known. The purpose is stated in a policy declaration appearing in § 3601, viz.:

<sup>4</sup>. *Infra* at 10.

**"It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States."**

It is clear beyond debate that the purpose of Title VIII was to make housing available to all without discrimination based upon race, color, religion or national origin. To effect this policy and purpose Congress specifically defined the acts which it declared to be unlawful with respect to renting (§ 3604) and labeled any such act as a "discriminatory housing practice" (§ 3602(f)). It thereafter provided a comprehensive scheme of remedies for any person who had been denied housing in violation of the Act. Insofar as relevant to the standing question the Act provides:

**"Sec. 3610. (a) Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter 'person aggrieved') may file a complaint with the Secretary.**

**• • • • •**  
**"(d) • • • the person aggrieved may • • • commence a civil action • • • against the respondent • • • to enforce the rights granted or protected by this subchapter."**

**"Sec. 3612 (a) The rights granted by sections • • • 3604, • • • may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction."**

Read in context it is clear that petitioners are not "persons aggrieved" within the meaning of § 3610(a). They simply have not been deprived of any rights granted by § 3604 which could be the subject of enforcement action under either § 3610(d) or § 3612.

## 2. The "Injury" Asserted by Petitioners Is Not Cognizable Under the Statutes

Petitioners ask to be accorded standing because allegedly " . . . they have suffered economic, professional, and social injuries and have been denied the right of interracial association" (Petition at 7). It is hardly worth noting that the purpose of the Fair Housing Act was not the enhancement of petitioners' economic, professional and social status and it is specious to assert that they have been denied "inter-racial association" by any act of respondents. Petitioners misdefine "person aggrieved" as "those *claiming injury*" (Petition at 10) and leap to an erroneous conclusion that they have standing. § 3610(a) does not define "person aggrieved" as merely anyone claiming injury but rather one who claims to have been "injured by a *discriminatory housing practice*." Petitioners simply do not fit the statutory definition of "person aggrieved." The "injuries" they allege are not injuries contemplated or cognizable by the Fair Housing Act and accordingly they do not meet the "zone of interest" test of *Data Processing Service v. Camp*, 397 U.S. 150.

## 3. Administrative Agencies Cannot Confer Standing Where None Exists

### (I) THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ("HUD")

The "determination" by an employee of HUD that petitioners have standing (Petition at 12) is entitled to no weight at all. This gratuitous unarticulated conclusion made only in a letter to petitioners' attorneys *while the case was pending in District Court* cannot even be deemed a semi-official declaration of the Department.<sup>5</sup>

5. In *Skidmore v. Swift*, 323 U.S. 134 (1944), this Court observed that "The weight of [an administrative determination] in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which gave it power to persuade if lacking power to control."

**(III) THE DEPARTMENT OF JUSTICE**

While the desire of the Department of Justice for assistance is understandable, denial of the petition will in no way detract from the assistance legitimately available to it. Respondents ask only that any action filed against them be brought and prosecuted by a proper plaintiff with a cognizable grievance in a proceeding that will terminate on a final and conclusive note. Neither the need for assistance nor the size of the Department's Civil Rights staff can confer or create standing where none exists. The "private Attorney General" concept will not be undermined in the slightest degree by a denial of standing to these petitioners.

**III.****THERE IS NO CONFLICT OF DECISIONS**

The decision of the court below is not inconsistent with or contrary to any of the judicial authorities cited by petitioners. In each of the cases relied upon, the plaintiff, unlike the petitioners here, was the person directly aggrieved and was the direct victim of the practice complained of. For example, in *Sullivan v. Little Hunting Park*, 396 U.S. 229 (1969), the plaintiff himself had been expelled from a corporation because he had leased his residence to a Negro; in *Barrows v. Jackson*, 346 U.S. 249 (1953), the right of the defendant to assert the doctrine of *Shelley v. Kraemer* (334 U.S. 1 (1947)) on his own behalf was upheld; in *Walker v. Pointer*, 304 F.Supp. 56 (1969), the plaintiffs themselves had been actually evicted from rented property; in *Marable v. Alabama Mental Health Board*, 297 F.Supp. 291 (1969), the plaintiffs were the direct victims of the alleged discriminatory practices; and in *Newman v. Piggie Park Enterprises*, 390 U.S. 400 (1968), *Jenkins v. United Gas Corporation*, 400 F.2d 28 (1969), *Hutchings v. United States Industries, Inc.*, 428 F.2d 303 (1970), *Miller v. Amusement*

*Enterprises, Inc.*, 426 F.2d 534 (1970), and *Bowe v. Colgate-Palmolive Co.*, 416 F.2d 711 (1969), the plaintiff was the person against whom an act of discrimination had been directly practiced and the action was specifically authorized by an appropriate statute. Similarly, the decision here is neither contrary to nor inconsistent with the decisions in cases such as *Lee v. Nyquist*, 318 F.Supp. 710 (W.D.N.Y. 1970) aff'd ..... U.S. .... [29 L.Ed.2d 105] (1971), *Kennedy Park Homes Association v. City of Lackawanna, N.Y.*, 436 F.2d 108 (C.A. 2 1970) cert. denied 401 U.S. 1010 (1971), *Scenic Hudson Preservation Conference v. FPC*, 354 F.2d 608 (C.A. 2 1965), or *Shannon v. HUD*, 436 F.2d 809 (C.A. 3 1970) affirming 305 F.Supp. 205, wherein the plaintiffs, who were the persons directly affected by governmental administrative action, were granted standing under a relevant statute to challenge governmental conduct in order to assure its regularity and compliance with pertinent laws and regulations. No such consideration is present in an action between private individuals and the basic reason for granting standing in those cases is absent here. The decisions upon which petitioners rely simply do not purport to grant standing to persons against whom no act of discrimination has been practiced.

### CONCLUSION

For the foregoing reasons it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

ROBERT M. SHEA  
THOMAS B. DONOVAN  
DINKELSPIEL, STEEFEL,  
LEVITT, WEISS & DONOVAN  
*Attorneys for Respondent  
Parkmerced Corporation*

RICHARD J. KILMARTIN  
JOHN H. RIORDAN, SR.  
KNIGHT, BOLAND & RIORDAN  
*Attorneys for  
Respondent  
Metropolitan Life  
Insurance Company*

(Appendices Follow)



## **Appendix A**

*In the United States District Court for the  
Northern District of California*

Case No. C-70 1754(RHS)

---

Paul J. Trafficante, et al.,

*Plaintiffs,*

and

Committee of Parkmerced Residents Com-  
mitted to Open Occupancy, et al.,

*Plaintiffs in Intervention,*

v.

Metropolitan Life Insurance Company,  
et al.,

*Defendants.*

### **MEMORANDUM OPINION AND ORDER DISMISSING COMPLAINT AND COMPLAINT IN INTERVENTION**

Plaintiffs, residents of the Parkmerced complex of apartments and town houses in San Francisco, brought this action under 42 U.S.C. § 1982 and the fair housing provisions of Title VIII of the Civil Rights Act of 1968, 42 U.S.C., Chapter 45, alleging that defendant Metropolitan, the then owner and operator of Parkmerced, was engaging in discriminatory housing practices in violation of the Act, making Parkmerced what plaintiffs have repeatedly referred to in this litigation as a "white ghetto" and depriving plaintiffs of their alleged right to live in a racially integrated community. A complaint in intervention was filed by community organizations and civic-minded individuals reiterating substantially the same claims. During the course of the litigation Metropolitan sold substantially all its interests in



Parkmerced to Parkmerced Corporation, which now operates it and was joined as a defendant.

The threshold question, of course, is whether the plaintiffs have standing to maintain this action. They do not allege, nor can they, that they themselves have been denied any of the rights guaranteed by Title VIII or by 42 U.S.C. § 1982 to purchase or rent real property. Rather, they assert that the denial of such rights to others not parties to this action violates the policies of the Act and has resulted in denying them the benefits of living in the type of integrated community which Congress hoped to achieve by enacting Title VIII.

The Court, after full review of the voluminous memoranda submitted, has concluded that plaintiffs and plaintiffs in intervention have no such generalized standing as they assert to enforce the policies of the Act. More specifically, they are not "persons aggrieved" under § 810 of the Act, 42 U.S.C. § 3610(a), and therefore may not maintain this suit under § 812, 42 U.S.C. § 3612, or under 42 U.S.C. § 1982. The enforcement of the public interest in fair housing enunciated in Title VIII of the Act and the creation of integrated communities to the extent envisioned by Congress are entrusted to the Attorney General by § 814, 42 U.S.C. § 3613, and not to private litigants such as those before the Court.

In reaching this conclusion the Court is not unmindful of the "private attorneys general" cases heavily relied upon by plaintiffs, including, quite recently, *Data Processing Service v. Camp*, 397 U.S. 150 (1970). Each of such cases, however, was brought under the Administrative Procedure Act or otherwise involved action by a government agency and not the activities of private individuals such as are involved here. These cases are extensively reviewed and distinguished in *Sierra Club v. Hickel*, 433 F. 2d 24 (9th Cir. 1970).

The motions to dismiss are granted and the complaint and complaint in intervention herein are dismissed.

Dated: February 10, 1971

ROBERT H. SCHNACKE

Robert H. Schnacke

*United States District Judge*

*Appendix****Appendix B****United States Court of Appeals  
for the Ninth Circuit*

No. 71-1325

Filed Sep 13 1971

Wm. B. Luck, Clerk

Paul J. Trafficante, et al.,

*Plaintiffs and Appellants,*vs.Metropolitan Life Insurance Company,  
et al.,*Appellees.*

Before: CHAMBERS and CARTER, Circuit Judges,  
and JACKSON, District Judge.

The petition for a rehearing is denied. The suggestion for  
a rehearing en banc is rejected.

All active circuit judges of the court have been advised  
of the suggestion for a rehearing en banc and none has re-  
quested it.

**Appendix C**

**CIVIL RIGHTS ACT OF 1866**

**42 U.S.C. § 1982**

**FAIR HOUSING ACT OF 1968**

**42 U.S.C. §§ 3601-3619**

**§ 1982. Property rights of citizens**

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

R.S. § 1978.

**§ 3601. Declaration of policy**

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

Pub.L. 90-284, Title VIII, § 801, Apr. 11, 1968, 82 Stat. 81.

**§ 3602. Definitions**

As used in this subchapter—

(a) "Secretary" means the Secretary of Housing and Urban Development.

(b) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) "Family" includes a single individual.

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

(e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) "Discriminatory housing practice" means an act that is unlawful under section 3604, 3605, or 3606 of this title.

(g) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

Pub.L. 90-284, Title VIII, § 802, Apr. 11, 1968, 82 Stat. 81.

**§ 3603. Effective dates of certain prohibitions—Application to certain described dwellings**

(a) Subject to the provisions of subsection (b) of this section and section 3607 of this title, the prohibitions against discrimination in the sale or rental of housing set forth in section 3604 of this title shall apply:

(1) Upon enactment of this subchapter, to—

(A) dwellings owned or operated by the Federal Government;

(B) dwellings provided in whole or in part with the aid of loans, advances, grants, or contributions made by the Federal Government, under agreements entered into after November 20, 1962, unless payment due thereon has been made in full prior to April 11, 1968;

(C) dwellings provided in whole or in part by loans insured, guaranteed, or otherwise secured by the credit of the Federal Government, under agreements entered into after November 20, 1962, unless payment thereon has been made in full prior to April 11, 1968: *Provided*, That nothing contained in subparagraphs (B) and (C) of this subsection shall be applicable to dwellings solely by virtue of the fact that they are subject to mortgages held by an FDIC or FSLIC institution; and

(D) dwellings provided by the development or the redevelopment of real property purchased,

rented, or otherwise obtained from a State or local public agency receiving Federal financial assistance for slum clearance or urban renewal with respect to such real property under loan or grant contracts entered into after November 20, 1962.

(2) After December 31, 1968, to all dwellings covered by paragraph (1) and to all other dwellings except as exempted by subsection (b) of this section.

#### Exemptions

(b) Nothing in section 3604 of this title (other than subsection (c)) shall apply to—

(1) any single-family house sold or rented by an owner; *Provided*, That such private individual owner does not own more than three such single-family houses at any one time: *Provided further*, That in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period: *Provided further*, That such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time: *Provided further*, That after December 31, 1969, the sale or rental of any such single-family house shall be excepted from the application of this subchapter only if such house is sold or rented (A) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person and (B) without the publication, posting or mailing, after notice, of any advertisement or written

notice in violation of section 3604(c) of this title; but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title, or

(2) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

Same; business of selling or renting dwellings defined

(c) For the purposes of subsection (b) of this section, a person shall be deemed to be in the business of selling or renting dwellings if—

(1) he has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or

(2) he has, within the preceding twelve months, participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or

(3) he is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

Pub.L. 90-284, Title VIII, § 803, Apr. 11, 1968, 82 Stat. 82.

### § 3604. Discrimination in the sale or rental of housing

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, or national origin.

Pub.L. 90-284, Title VIII, § 804, Apr. 11, 1968, 82 Stat. 83.

§ 3605. Discrimination in the financing of housing

After December 31, 1968, it shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, or national origin of such person or of any person associated with him in connection



with such loan or other financial assistance or the purposes of such loan or other financial assistance, or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given: *Provided*, That nothing contained in this section shall impair the scope or effectiveness of the exception contained in section 3603(b) of this title.

Pub.L. 90-284, Title VIII, § 805, Apr. 11, 1968, 82 Stat. 83.

§ 3606. Discrimination in the provision of brokerage services

After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, or national origin.

Pub.L. 90-284, Title VIII, § 806, Apr. 11, 1968, 82 Stat. 84.

§ 3607. Religious organization or private club exemption

Nothing in this subchapter shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this subchapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides

lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

Pub.L. 90-284, Title VIII, § 807, Apr. 11, 1968, 82 Stat. 84.

§ 3608. Administration—Authority and responsibility

(a) The authority and responsibility for administering this Act shall be in the Secretary of Housing and Urban Development.

Delegation of authority; appointment of hearing  
examiners; location of conciliation meetings;  
administrative review

(b) The Secretary may delegate any of his functions, duties, and powers to employees of the Department of Housing and Urban Development or to boards of such employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under this subchapter. The persons to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Department of Housing and Urban Development in compliance with sections 3105, 3344, 5362, and 7521 of Title 5. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred. The Secretary shall by rule prescribe such rights of appeal from the decisions of his hearing examiners to other hearing examiners or to other officers in the Department, to boards of officers or to himself, as shall be appropriate and in accordance with law.

Cooperation of Secretary and executive departments and agencies in administration of housing and urban development programs and activities to further fair housing purposes

(c) All executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this subchapter and shall cooperate with the Secretary to further such purposes.

#### Functions of Secretary

(d) The Secretary of Housing and Urban Development shall—

(1) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States;

(2) publish and discriminate reports, recommendations, and information derived from such studies;

(3) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(4) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices; and

(5) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this subchapter.

Pub.L. 90-284, Title VIII, § 808(a), (c)-(e), Apr. 11, 1968, 82 Stat. 84, 85.

§ 3609. Education and conciliation, conferences and consultations; reports

Immediately after April 11, 1968, the Secretary shall commence such educational and conciliatory activities as in

his judgment will further the purposes of this subchapter. He shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this subchapter and his suggested means of implementing it, and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement. He may pay per diem, travel, and transportation expenses for persons attending such conferences as provided in section 5703 of Title 5. He shall consult with State and local officials and other interested parties to learn the extent, if any, to which housing discrimination exists in their State or locality, and whether and how State or local enforcement programs might be utilized to combat such discrimination in connection with or in place of, the Secretary's enforcement of this subchapter. The Secretary shall issue reports on such conferences and consultations as he deems appropriate.

Pub.L. 90-284, Title VIII, § 809, Apr. 11, 1968, 82 Stat. 85.

§ 3610. Enforcement—Person aggrieved; complaint; copy; investigation; informed proceedings; violations of secrecy; penalties

(a) Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a complaint with the Secretary. Complaints shall be in writing and shall contain such information and be in such form as the Secretary requires. Upon receipt of such a complaint the Secretary shall furnish a copy of the same to the person or persons who allegedly committed or are about to commit the alleged discriminatory housing practice. Within thirty days after receiving a complaint, or within thirty days after the expiration of any period of reference under subsection (c) of this section, the Secretary shall investigate the complaint and give

notice in writing to the person aggrieved whether he intends to resolve it. If the Secretary decides to resolve the complaint, he shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under this subchapter without the written consent of the persons concerned. Any employee of the Secretary who shall make public any information in violation of this provisions shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned not more than one year.

Complaint; limitations; answer; amendments; verification

(b) A complaint under subsection (a) of this section shall be filed within one hundred and eighty days after the alleged discriminatory housing practice occurred. Complaints shall be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him and with the leave of the Secretary, which shall be granted whenever it would be reasonable and fair to do so, may amend his answer at any time. Both complaints and answers shall be verified.

Notification of State or local agency of violation of State or local fair housing law; commencement of State or local law enforcement proceedings; certification of circumstances requisite for action by Secretary

(c) Wherever a State or local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this subchapter, the Secretary shall notify the appropriate State or local agency of any

complaint filed under this subchapter which appears to constitute a violation of such State or local fair housing law, and the Secretary shall take no further action with respect to such complaint if the appropriate State or local law enforcement official has, within thirty days from the date the alleged offense has been brought to his attention, commenced proceedings in the matter, or having done so, carries forward such proceedings with reasonable promptness. In no event shall the Secretary take further action unless he certifies that in his judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action.

Commencement of civil actions; State or local remedies available; jurisdiction and venue; findings; injunctions; appropriate affirmative orders

(d) If within thirty days after a complaint is filed with the Secretary or within thirty days after expiration of any period of reference under subsection (c) of this section, the Secretary has been unable to obtain voluntary compliance with this subchapter, the person aggrieved may, within thirty days thereafter, commence a civil action in any appropriate United States district court, against the respondent named in the complaint, to enforce the rights granted or protected by this subchapter, insofar as such rights relate to the subject of the complaint: *Provided*, That no such civil action may be brought in any United States district court if the person aggrieved has a judicial remedy under a State or local fair housing law which provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this subchapter. Such actions may be brought without regard to the amount in controversy in any United States district court for the district in which the discriminatory housing practice is alleged to have occurred or be about to occur or in which the



respondent resides or transacts business. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may, subject to the provisions of section 3612 of this title, enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate.

#### Burden of proof

(e) In any proceeding brought pursuant to this section, the burden of proof shall be on the complainant.

#### Trial of action; termination of voluntary compliance efforts

(f) Whenever an action filed by an individual, in either Federal or State court, pursuant to this section or section 3612 of this title, shall come to trial the Secretary shall immediately terminate all efforts to obtain voluntary compliance.

Pub.L. 90-284, Title VIII, § 810, Apr. 11, 1968, 82 Stat. 85.

§ 3611. Evidence—Investigation; access to records, documents, and other evidence; copying; searches and seizures; subpoenas for Secretary; interrogatories; administration of oaths

(a) In conducting an investigation the Secretary shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation: *Provided, however,* That the Secretary first complies with the provisions of the Fourth Amendment relating to unreasonable searches and seizures. The Secretary may issue subpoenas to compel

his access to or the production of such materials, or the appearance of such persons, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in the United States district court for the district in which the investigation is taking place. The Secretary may administer oaths.

#### Subpoenas for respondent

(b) Upon written application to the Secretary, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the Secretary to the same extent and subject to the same limitations as subpoenas issued by the Secretary himself. Subpoenas issued at the request of a respondent shall show on their face the name and address of such respondent and shall state that they were issued at his request.

#### Compensation and mileage fees of witnesses

(c) Witnesses summoned by subpoena of the Secretary shall be entitled to the same witness and mileage fees as are witnesses in proceedings in United States district courts. Fees payable to a witness summoned by a subpoena issued at the request of a respondent shall be paid by him.

#### Revocation or modification of petition for subpoena; good reasons for grant of petition

(d) Within five days after service of a subpoena upon any person, such person may petition the Secretary to revoke or modify the subpoena. The Secretary shall grant the petition if he finds that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe



with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.

#### Enforcement of subpoena

(e) In case of contumacy or refusal to obey a subpoena, the Secretary or other person at whose request it was issued may petition for its enforcement in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(f) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if in his power to do so, in obedience to the subpoena or lawful order of the Secretary, shall be fined not more than \$1,000 or imprisoned not more than one year, or both. Any person who, with intent thereby to mislead the Secretary, shall make or cause to be made any false entry or statement of fact in any report, account, record, or other document submitted to the Secretary pursuant to his subpoena or other order, or shall willfully neglect or fail to make or cause to be made full, true, and correct entries in such reports, accounts, records, or other documents, or shall willfully mutilate, alter, or by any other means falsify any documentary evidence, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

#### Attorney General to conduct litigation

(g) The Attorney General shall conduct all litigation in which the Secretary participates as a party or as amicus pursuant to this Act.

Pub.L. 90-284, Title VIII, § 811, Apr. 11, 1968, 82 Stat. 87.

§ 3612. Enforcement by private persons — Civil action; Federal and State jurisdiction; complaint; limita-

tions; continuance pending conciliation efforts; prior bona fide transactions unaffected by court orders

(a) The rights granted by sections 3603, 3604, 3605, and 3606 of this title may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred: *Provided, however,* That the court shall continue such civil case brought pursuant to this section or section 3610(d) of this title from time to time before bringing it to trial if the court believes that the conciliation efforts of the Secretary or a State or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the Secretary or to the local or State agency and which practice forms the basis for the action in court: *And provided, however,* That any sale, encumbrance, or rental consummated prior to the issuance of any court order issued under the authority of this Act, and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of this Act shall not be affected.

Appointment of counsel and commencement of civil actions in Federal or State courts without payment of fees, costs, or security

(b) Upon application by the plaintiff and in such circumstances as the court may deem just, a court of the United States in which a civil action under this section has been brought may appoint an attorney for the plaintiff and may authorize the commencement of a civil action upon proper

showing without the payment of fees, costs, or security. A court of a State or subdivision thereof may do likewise to the extent not inconsistent with the law or procedures of the State or subdivision.

Injunctive relief and damages; limitation;  
court costs; attorney fees

(c) The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual damages and not more than \$1,000 punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff: *Provided*, That the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees.

Pub.L. 90-284, Title VIII, § 812, Apr. 11, 1968, 82 Stat. 88.

§ 3613. Enforcement by the Attorney General; issues of general public importance; civil action; Federal jurisdiction; complaint; preventive relief

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this subchapter, or that any group of persons has been denied any of the rights granted by this subchapter and such denial raises an issue of general public importance, he may bring a civil action in any appropriate United States district court by filing with it a complaint setting forth the facts and requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such pattern or practice or denial of rights, as he deems necessary to insure the full enjoyment of the rights granted by this subchapter.

Pub.L. 90-284, Title VIII, § 813, Apr. 11, 1968, 82 Stat. 88.

**§ 3614. Expedition of proceedings**

Any court in which a proceeding is instituted under section 3612 or 3613 of this title shall assign the case for hearing at the earliest practicable date and cause the case to be in every way expedited.

Pub.L. 90-284, Title VIII, § 814, Apr. 11, 1968, 82 Stat. 88.

**§ 3615. Effect on State laws**

Nothing in this subchapter shall be construed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this subchapter shall be effective, that grants, guarantees, or protects the same rights as are granted by this subchapter; but any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid.

Pub.L. 90-284, Title VIII, § 815, Apr. 11, 1968, 82 Stat. 89.

**§ 3616. Cooperation with State and local agencies administering fair housing laws; utilization of services and personnel; reimbursement; written agreements; publication in Federal Register**

The Secretary may cooperate with State and local agencies charged with the administration of State and local fair housing laws and, with the consent of such agencies, utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may reimburse such agencies and their employees for services rendered to assist him in carrying out this subchapter. In furtherance of such cooperative efforts, the Secretary may enter into written agreements with such State or local agencies. All agreements and terminations thereof shall be published in the Federal Register.

Pub.L. 90-284, Title VIII, § 816, Apr. 11, 1968, 82 Stat. 89.

**§ 3617. Interference, coercion, or intimidation; enforcement by civil action**

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title. This section may be enforced by appropriate civil action.

Pub.L. 90-284, Title VIII, § 817, Apr. 11, 1968, 82 Stat. 89.

**§ 3618. Authorization of appropriations**

There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this subchapter.

Pub.L. 90-284, Title VIII, § 818, Apr. 11, 1968, 82 Stat. 89.

**§ 3619. Separability of provisions**

If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, the remainder of the subchapter and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

Pub.L. 90-284, Title VIII, § 819, Apr. 11, 1968, 82 Stat. 89.

***Appendix D***

COMPLAINT FOR VIOLATION OF  
FAIR HOUSING LAWS  
BURBRIDGE, et al. vs. PARKMERCED  
CORPORATION, et al  
NORTHERN DISTRICT OF CALIFORNIA  
No. C-71-378 [AJZ]

George H. Clyde, Jr.  
Stephen V. Bomse  
Margaret D. Brown  
44 Montgomery Street, Suite 3000  
San Francisco, California 94104  
Telephone: 981-5000  
Attorneys for Plaintiffs

*In the United States District Court  
for the Northern District of California*

No. C-71-378 [AJZ]

Charles Burbridge, Ernestine Burbridge,  
Dolores Ellis, Glordean Brown and  
John Hensley, individually and on be-  
half of all persons similarly situated,  
*Plaintiffs,*

vs.

Parkmerced Corporation, a California  
corporation, and Metropolitan Life In-  
surance Company, a New York corpora-  
tion,

*Defendants.*

COMPLAINT FOR VIOLATION OF  
FAIR HOUSING LAWS

FIRST CAUSE OF ACTION

1. This First Cause of Action is maintained pursuant to  
§ 812 of the Civil Rights Act of 1968, 42 U.S.C. § 3612, to  
obtain redress and affirmative relief from discrimination in

housing practices against plaintiffs and all other persons similarly situated on the basis of race, color, and/or national origin.

2. Representative plaintiffs Charles Burbridge, Ernestine Burbridge, Dolores Ellis, Glordean Brown and John Hensley are Negro citizens of the United States, and residents of the Northern District of California.

3. Each of the persons named as a plaintiff herein has applied for or attempted to apply for and been refused an apartment at Parkmerced because of his or her race, color, religion, and/or national origin, and as a result of the discriminatory policies and practices of defendants hereinafter described. Plaintiffs Burbridge applied or attempted to apply for an apartment within 180 days of the filing of this Complaint. Plaintiffs Ellis and Brown applied or attempted to apply for an apartment prior to said 180-day period (to wit in or about September, 1969, and August, 1970, respectfully) but said applications remained on file and said plaintiffs were ready, willing and able to accept an apartment at Parkmerced within the past 180 days. Plaintiff Hensley applied or attempted to apply for an apartment at Parkmerced in or about April, 1968, and remained ready, willing and able at all times from said date to and including December, 1968, to accept an apartment at Parkmerced but was prevented from obtaining such an apartment by the discriminatory practices hereinafter described, which practices have continued without substantial change to and including the date of filing this Complaint. At the time each plaintiff attempted to make an application for an apartment at Parkmerced he was a bona fide potential applicant for such apartment and was interested in residing at Parkmerced.

4. The plaintiffs named herein are representatives of a class, as defined by Rule 23(a) of the Federal Rules of Civil Procedure, and bring this action on behalf of the



entire class, pursuant to said rule. The class consists of all members of minority racial and ethnic groups, including non-whites and persons of Spanish surname, against whom defendants have discriminated, as hereinafter alleged, and includes members of said groups who have applied for apartments at Parkmerced, who have attempted to apply for such apartments, and who have been discouraged from applying for such apartments. The members of the class are hereinafter referred to as "plaintiff class." The class is so numerous that joinder of all members is impracticable. There are questions of law and fact common to the class. The claims of the representative parties are typical of the claims of the class, and the representatives will fairly and adequately protect the interests of the class. Adjudication of the claims of the representative parties would as a practical matter be dispositive of the interests of other members of the class who are not parties to the adjudication and the defendants herein have acted or refused to act on grounds generally applicable to the class, thereby making declaratory, injunctive or other affirmative relief appropriate to the class as a whole.

5. Defendant Parkmerced Corporation is a California corporation with its principal place of business in the City and County of San Francisco, California, at Parkmerced. Parkmerced Corporation maintains offices and transacts business within the Northern District of California.

6. Defendant Metropolitan Life Insurance Company ("Metropolitan") is a New York corporation with its principal place of business in New York, New York. Metropolitan maintains offices and transacts business, among other places, within the Northern District of California.

7. At all times herein mentioned until December 21, 1970, Metropolitan was the owner of and operated a planned residential community located in San Francisco, California,



known as Parkmerced. The Parkmerced community consists of numerous high-rise apartment buildings and garden-apartment complexes, which were constructed by Metropolitan in the 1940's and the early 1950's. Parkmerced contains approximately 3,500 residential units and provides moderate rental housing for approximately 8,000 people.

8. On or about December 18, and December 21, 1970, defendants Metropolitan and Parkmerced Corporation entered into and consummated various transactions relating to the Parkmerced property including the following:

(a) Metropolitan leased the underlying real property at Parkmerced to Parkmerced Corporation for a thirty-year period, with options to renew said lease for three additional periods of fifteen years each. Said lease provides for rental payable to Metropolitan calculated, under some circumstances, on the basis of revenue from the operations at Parkmerced. No option to purchase said underlying real property was granted to Parkmerced Corporation.

(b) Parkmerced Corporation purchased all of the building improvements and personal property at Parkmerced. Payment therefor is to be made in installments, secured by a deed of trust, a security interest in personal property, and an assignment of rents in favor of Metropolitan.

(c) Metropolitan and Parkmerced Corporation made certain further agreements contemplating concerted future action by them with respect to the operation and ownership of Parkmerced.

9. Since December 21, 1970, Parkmerced Corporation has operated Parkmerced without substantial change in the business operations or policies at said development. All or virtually all of the Parkmerced rental office employees of Metropolitan have been retained by Parkmerced Corporation, and plaintiffs are informed and believe that Parkmerced Corporation presently intends to make no substantial change in the operation or policies of Parkmerced.

10. During the negotiations preceding the transactions described in paragraph 8 above, the principals, officers, directors, agents, and attorneys of Parkmerced Corporation had knowledge of the allegations of racial discrimination contained hereby by virtue of their familiarity with the case of *Trafficante, et al., v. Metropolitan Life Insurance Company*, (No. C-70-1754 [RHS]) filed in the United States District Court for the Northern District of California on August 18, 1970, and by virtue of correspondence directed to Harry H. Helmsley and Helmsley-Spear, Inc., principals of Parkmerced Corporation.

11. During the past 180 days defendants, and each of them, acting individually and in combination and concert with each other, have systematically discriminated against members of minority racial and ethnic groups, in connection with the offer and rental of dwellings at Parkmerced. As of the date hereof, plaintiffs are informed and believe that members of minority racial and ethnic groups comprise less than 1% of the population of Parkmerced. Said discrimination is continuing as of the date hereof and will continue hereafter unless restrained by this Court, as hereinafter prayed.

12. In particularization of the foregoing, and not in limitation thereof, defendants, and each of them, acting individually and in combination and concert with each other, have discriminated and will continue to discriminate against plaintiffs and all other persons similarly situated in the following ways and manners:

(a) by refusing to rent a dwelling after a prospective tenant has made a bona fide offer, by refusing to negotiate with prospective tenants for the rental of, and by otherwise making unavailable or denying dwellings to prospective tenants, because of race, color, or national origin of said prospective tenants;

(b) by discriminating against persons in the terms, conditions and privileges of rental of dwellings, and in the provision of services or facilities in connection therewith, because of race, color, or national origin of such persons; and

(c) by representing to persons because of the race, color, or national origin of such persons that dwellings are not available for inspection or rental when such dwellings are in fact so available.

13. In maintaining and furthering their respective practices and policies of discrimination against the named plaintiffs and members of the plaintiff class, defendants, and each of them, acting individually and in combination and concert with each other, have done or caused to be done the following acts, among others:

(a) Defendants have persuaded minority group members who are potential and qualified applicants for rental of dwellings at Parkmerced that they are not welcome at Parkmerced, that applications by them for rental of dwellings at Parkmerced will be denied or never acted upon, and that both residents, management and employees will create a hostile atmosphere for such applicants if admitted as tenants at Parkmerced;

(b) Defendants have discouraged minority-group members who are potential and qualified applicants for the rental of dwellings at Parkmerced from making application by making misrepresentations (through direct statements, omissions, and half-truths) concerning the existence and availability of apartments at Parkmerced, the rental rates, the terms and conditions of rental, the qualifications required of applicants, the waiting list procedures, and the length of time required before apartments will become available. Defendants have further discouraged minority-group members who are potential and qualified applicants

by making rude remarks and insinuations, and by otherwise failing to treat minority-group applicants courteously;

(c) Defendants have failed and refused to permit or accept applications to Parkmerced from minority-group persons while accepting such applications from Caucasians.

(d) Defendants have discriminated against minority-group applicants in the method of processing applications for rental of dwellings at Parkmerced by applying different practices and procedures to minority-group applicants than are applied to Caucasians;

(e) Defendants have manipulated the "waiting list" for dwellings within Parkmerced by giving preference to certain persons and classes of persons, and by delaying action upon the applications of other persons or classes of persons, in such a manner as to discriminate against minority-group applicants;

(f) Defendants have set and maintained standards for acceptance to Parkmerced which effectively discriminate against minority applicants, and have applied such standards in an unequal and discriminatory manner so as to prevent the rental of dwellings by minority groups within Parkmerced;

(g) Defendants have discriminated against minority-group members in the terms and conditions of rental at Parkmerced, and in particular, Parkmerced Corporation has adopted a dual-rent structure whereby new tenants are required to pay substantially higher rental than present tenants whose leases have terminated;

(h) Defendants have systematically attempted to discourage minority applicants from continuing their applications by various means, such as by offering them apartments which are substantially more expensive and less desirable than those actually applied for;

(i) Defendants have adopted policies of giving preferential treatment to certain organizations the members of

which are virtually all Caucasian, but have failed and refused to give such preferential treatment to members of similar organizations, many of whose members are of minority groups;

(j) Defendants have adopted policies of giving preferential treatment to certain organizations but have failed to give such preference to minority-group members of such organizations.

(k) Defendants have adopted policies in connection with application for apartments, rentals, and transfers at Parkmerced which are racially neutral on their face, but which have the effect of discriminating against members of minority groups, and which are not justified by any business necessity.

14. Each of the practices, policies and acts above alleged has occurred within 180 days from the date hereof and has also occurred for many years prior thereto.

15. The discriminations against individual plaintiffs and the plaintiff class alleged herein constitute continuing violations, which have occurred throughout the periods when individual plaintiffs were willing and able to rent apartments at Parkmerced on the same terms and conditions as are or were made available to Caucasians. Said violations are occurring as of the date hereof, and will continue to occur unless defendants are restrained by Order of this Court.

16. As a direct and proximate result of the unlawful policies, practices and acts above alleged, plaintiffs and the represented class have been injured in each of the following ways and manners, among others:

(a) by being deprived of the right to reside at Parkmerced and being forced to reside at other locations where they have been compelled to pay greater rent or to accept inferior apartments in less desirable neighborhoods with poorer facilities and services;

(b) by suffering embarrassment, humiliation, and emotional distress.

## SECOND CAUSE OF ACTION

17. This Second Cause of Action is maintained under 42 U.S.C. § 1982, which provides:

"All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

18. Plaintiffs hereby incorporate by reference as if set out fully herein paragraphs 2 through 16, inclusive, of their First Cause of Action.

19. By reason of the foregoing acts of discrimination which have occurred and which will continue to occur unless restrained by appropriate Order of this Court, plaintiffs and members of the class have been and will continue to be deprived of their rights to lease property within Parkmerced on terms and conditions co-equal with those offered to and enjoyed by white citizens.

## DAMAGES AND EQUITABLE RELIEF

20. Plaintiffs are informed and believe and thereon allege that apartments at Parkmerced have been rented for less than the fair market value for comparable rental units in the City and County of San Francisco. Plaintiffs are further informed and believe and thereon allege that the difference between the rates charged for apartments at Parkmerced and the prevailing rate for comparable rental units in the City and County of San Francisco is at least \$50 per month.

21. Except for the discriminatory policies, practices and acts of defendants as above alleged, at least 1,000 apartments at Parkmerced would have been rented to plaintiffs and/or members of the class herein at all times rele-



vant under 42 U.S.C. § 3612 and 42 U.S.C. § 1982, and plaintiffs and the represented class have therefore been damaged by being compelled to pay excessive rents.

22. In addition to the foregoing damages which have been incurred by the class of persons represented herein, plaintiffs are informed and believe and thereon allege that defendants have knowingly, willfully, and maliciously deprived plaintiffs and the class of rights provided to them under Title VIII of the 1968 Civil Rights Act and 42 U.S.C. § 1982. This is therefore a proper case for the award of punitive and exemplary damages against defendants, and plaintiffs pray for such damages in the amount of \$1,000 for each plaintiff and class member herein for such other sum as may be deemed proper and just in the circumstances, but not less than \$1,000,000. Said damages should be awarded to plaintiffs and to the class and should be applied in the form of rent subsidies and/or economic incentives for the benefit of members of the class in connection with an appropriate plan of affirmative action as hereinafter prayed.

23. Plaintiffs further pray that this Court enter its Order enjoining and restraining defendants and each of them from discriminating against plaintiffs and/or the class in the offer or rental of dwellings at Parkmerced and requiring said defendants, and each of them, to take all affirmative action which is necessary to correct the effects of prior discrimination.

Wherefore plaintiffs pray judgment as follows:

1. That the Court enter its Order declaring that these proceedings are, and may be maintained as, a class action;
2. That the Court find, adjudge and decree that defendants, and each of them, have discriminated against plaintiffs and members of the class on the basis of their race, religion and/or national origin in connection with the offer or rental of apartments at Parkmerced;

3. That the Court award plaintiffs and members of the class compensatory damages according to their proof at trial and punitive damages as may be just and proper;

4. That the Court order defendants to offer to plaintiffs and other members of the class dwellings on the same terms and conditions as dwellings were offered to white persons at the time of discrimination by defendants against plaintiffs and members of the class;

5. That the Court enjoin defendants from discrimination against plaintiffs and members of the class in connection with the offer or rental of dwellings at Parkmerced and require defendants to take all action necessary to correct the effects of prior discrimination;

6. That plaintiffs be awarded their costs of suit and a reasonable attorneys fee, as provided by law; and

7. For such other and further relief as to this Court may appear proper.

Dated February 25, 1971.

George H. Clyde, Jr.

Stephen V. Bomse

Margaret D. Brown



# **In the Supreme Court of the United States**

OCTOBER TERM, 1971

---

No. 71-708

PAUL J. TRAFFICANTE, ET AL., PETITIONERS

v.

METROPOLITAN LIFE INSURANCE COMPANY, ET AL.

---

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

---

**MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE**

---

The United States is of the view that the petition for a writ of certiorari should be granted.

This case presents the question whether, under Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-3619, tenants in an apartment complex can maintain a suit seeking to enjoin their landlord from refusing to rent to non-whites on the basis of race.<sup>1</sup> The court of appeals, affirming the district court's dismissal of petitioners' complaint, held that only the Attorney General or prospective tenants who have been discriminated against have "standing" to sue under

---

<sup>1</sup> Petitioners also invoked the Civil Rights Act of 1866, 42 U.S.C. 1982, and sought damages.

Title VIII, since, in the court's view, petitioners are not "persons aggrieved" within the meaning of 42 U.S.C. 3610(a) and 3612.<sup>1</sup>

The questions raised by this case are of substantial importance in the implementation of Title VIII and warrant review by this Court. The decision of the court of appeals precludes an entire class of persons—incumbent tenants—from supplementing the Attorney General's enforcement of Title VIII and thereby impedes full realization of the "policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. 3601. Since the effectiveness of Title VIII depends in large measure upon the resources available for enforcement, this important question of who may bring actions under Title VIII should be promptly resolved—and resolved, we submit, consistently with the broad declaration of congressional policy on which the Act is founded.

1. Under 42 U.S.C. 3610(a), "[a]ny person who claims to have been injured by a discriminatory housing practice \* \* \* (hereafter 'person aggrieved') may file a complaint with the Secretary [of Housing and Urban Development]." If, within thirty days of the filing of such a complaint, the Secretary is unable to secure voluntary compliance, the "person aggrieved" may institute a civil action in the United States district court to enforce rights granted or protected under Title VIII. 42 U.S.C. 3610(d).

---

<sup>1</sup> The United States participated as *amicus curiae* in the court of appeals in support of petitioners.

In this case, the Department of Housing and Urban Development found that petitioners, who are tenants, were within the class of "persons aggrieved" under 42 U.S.C. 3610(a) and therefore entitled to file a complaint with the Department regarding the discriminatory practices of their landlord (Pet. 12-13). When the Department's efforts to bring about voluntary compliance failed, petitioners brought this suit (Pet. App. C, p. 5).

Petitioners' complaint alleged a number of particular practices by their landlord that discriminated against prospective tenants on the basis of race (Pet. App. C, pp. 2-4).<sup>3</sup> The complaint further alleged that petitioners had been injured in fact by these practices since they had been deprived of the benefits of living within a nonsegregated community and had suffered, both mentally and economically, by living in a "white ghetto" (Pet. App. C, pp. 4-5).<sup>4</sup>

2. The court of appeals recognized that the language used by Congress in Section 3610(a) to define the class of persons entitled to sue is "very broad" (Pet. App. A, p. 4 n. 6). The court, however, construed the lan-

<sup>3</sup> Since the district court dismissed the complaint, the court of appeals accepted the allegations in the complaint as true (Pet. App. A, p. 6 n. 8).

<sup>4</sup> Thus in this respect, as well as in the statutory basis for the claim, the case presents substantially different questions from those involved in the pending cases of *Sierra Club v. Morton*, No. 70-34, where petitioner asserted no more than an undifferentiated "public interest" in the environment to challenge the action of federal officials, and *Laird v. Tatum*, No. 71-288, where the basis for standing is the alleged effect of governmental action on other persons, not parties to the litigation.

guage narrowly to include only "persons who are the objects of discriminatory housing practices" (Pet. App. A, p. 6).

In our view this narrow construction is unwarranted by the statute's language, its purpose or the legislative history of the Act. Congress said in 42 U.S.C. 3610 that "[a]ny person who claims to have been injured by a discriminatory housing practice" may sue under Title VIII. As this Court stated in *Federal Communications Commission v. Sanders Bros. Radio Station*, 309 U.S. 470, 477, where the relevant statute allowed appeal by all "persons aggrieved" by the Commission's grant or denial of a license, "Congress had some purpose" in using such broad language.

Here Congress presumably recognized, as has this Court in related contexts, both the limited size of the Attorney General's staff for civil rights enforcement<sup>5</sup> and the important role private litigants have played in civil rights cases.<sup>6</sup> Congress accordingly concluded that with respect to housing, where racial segregation is the product of a pervasive dual housing market,<sup>7</sup> suits by private litigants who have suffered as a result of discriminatory housing practices would provide a necessary supplement to enforcement by the Attorney General. Cf. *J. I. Case Co. v. Borak*, 377 U.S. 426, 432.

<sup>5</sup> See *Allen v. State Board of Elections*, 393 U.S. 544, 556; *Perkins v. Matthews*, 400 U.S. 379, 392, 396.

<sup>6</sup> See *Newman v. Piggie Park Enterprises*, 390 U.S. 400.

<sup>7</sup> See Hearings on S. 1858 before the Senate Sub-Committee on Housing and Urban Development of the Committee on Banking and Currency, 90th Cong. 1st Sess., p. 37 (hereinafter Senate Hearings).

It would be inconsistent with these congressional aims for the class of persons entitled to sue under Title VIII to be limited as the court of appeals held. Tenants in housing facilities maintained on a segregated basis by their landlord, as well as those who have been excluded because of their race, are injured by such illegal practices.\* In their complaint in this case, petitioners have set forth in detail the nature of their injury. There is no reason why Congress would have intended to allow suits only by rejected applicants and not by the tenants themselves. The people already living in an apartment complex are in a position to know whether their landlord is discriminating on the basis of race; they will know the racial composition of their apartment building; they will know whether apartments are vacant while nonwhite applicants are turned away; and they will know from their own experience how prospective tenants are chosen. Moreover, the continuing injury suffered by incumbent tenants as a result of their landlord's discriminatory practices is often more amenable to effec-

---

\* See *Nyquist v. Lee*, 402 U.S. 935, where this Court affirmed a district court decision, 318 F. Supp. 710 (W.D. N.Y.), which sustained the standing of white and black parents to challenge, under the equal protection clause, a New York statute limiting the authority of local school boards to desegregate their schools. The district court's decision was based in large part on the injury suffered by school children attending substantially unracial schools as a result of restrictions on their opportunity to know and attend school with children of other races, 318 F. Supp. at 714.

Analogous considerations were put forward by proponents of fair housing legislation. See Senate Hearings, pp. 161-162, 180, 236, 303, 359, 384, 434.

tive judicial redress than is the injury to a prospective tenant who has been turned away, since the latter may satisfy his housing needs elsewhere before judicial relief can be secured. The incumbent tenants, therefore, may often have a substantially greater incentive to bring and prosecute fully a lawsuit, and there is no reason for construing the statutory conferral of standing contrary to this reality.

Furthermore, where, as petitioners allege here, non-white applicants are told by the landlord that "residents, management and employees will create a hostile atmosphere" for them if they are accepted, suits by such persons are discouraged. They may not want to live in such a place and may thus be unwilling to sue in order to secure their right to do so. In such situations, suits by the tenants themselves are essential if private litigation is to provide the supplemental enforcement Congress intended.\*

For these reasons, the Secretary of Housing and Urban Development has construed the statute to allow complaints to be filed by incumbent tenants. But the court of appeals, by construing Section 3610(a) to preclude suits by such tenants, has presumably also limited the class of persons entitled to seek informal conciliatory action by the Department. The Secretary's interpretation of the statute he administers is entitled to great weight, *Udall v. Tallman*, 380 U.S. 1, 16. In light of this administrative construction, together

---

\* See *Sullivan v. Little Hunting Park*, 396 U.S. 229, 237; *Barrows v. Jackson*, 346 U.S. 249, 259.

with the language of the statute itself and Congress' evident purpose in using that language, petitioners were within the class of persons entitled to sue, and the court of appeals erred in holding otherwise. The significant effect of that decision on implementation of Title VIII of the Civil Rights Act of 1968 makes review by this Court appropriate.

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted.

ERWIN N. GRISWOLD,  
*Solicitor General.*

DAVID L. NORMAN,  
*Assistant Attorney General.*

A. RAYMOND RANDOLPH, Jr.,  
*Assistant to the Solicitor General.*

JANUARY 1972.







**COPY**

MAY 6 1972

MICHAEL RODAK, JR., CLERK

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1971

No. 71—708

---

PAUL J. TRAFFICANTE, *et al.*,

*Petitioners,*

vs.

METROPOLITAN LIFE INSURANCE COMPANY, *et al.*,

*Respondents.*

---

---

**BRIEF FOR THE N.A.A.C.P. LEGAL DEFENSE AND  
EDUCATIONAL FUND, INC., AS AMICUS CURIAE**

---

---

JACK GREENBERG  
JAMES M. NABRIT, III  
CHARLES STEPHEN RALSTON  
MICHAEL DAVIDSON  
10 Columbus Circle  
New York, New York 10019

WILLIAM BENNETT TURNER  
ALICE DANIEL  
LOWELL JOHNSTON  
12 Geary Street  
San Francisco, California 94108

*Attorneys for the N.A.A.C.P. Legal  
Defense and Educational Fund, Inc.*

---

---



## INDEX

	PAGE
Interest of the Amicus .....	1
Argument .....	2
A. The Injury to Present Tenants Caused By Their Landlord's Actions to Prevent the Ra- cial Integration of Their Community Gives Them Standing to Bring This Lawsuit .....	3
B. Present Residents May be the Only or Most Effective Adversary Who Can Enforce the Fair Housing Laws, and They also Serve the Public Interest in Doing So .....	5
CONCLUSION .....	9

### TABLE OF AUTHORITIES

#### *Cases:*

Association of Data Processing Organizations v. Camp, 397 U.S. 150 .....	3
Baker v. Carr, 369 U.S. 186 .....	3
Barrows v. Jackson, 346 U.S. 249 .....	7
Bowe v. Colgate-Palmolive Co., 416 F.2d 711 .....	8
Eisenstadt v. Baird, — U.S. —, 40 U.S.L.W. 4303	7
Hutchings v. United States Industries, Inc., 428 F.2d 303 .....	8
Jenkins v. United Gas Corp., 400 F.2d 28 .....	8

	PAGE
Newman v. Piggie Park Enterprises, Inc., 380 U.S. 400	8
Oatis v. Crown Zellerbach Corp., 398 F.2d 496 .....	8
Pettway v. American Cast Iron Pipe Co., 411 F.2d 998	8
Sierra Club v. Morton, — U.S. —, 40 U.S.L.W. 4397 .....	4, 8
Trafficante v. Metropolitan Life Insurance Company, 446 F.2d 1158 .....	2, 3
United States v. West Peachtree Tenth Corporation, 437 F.2d 221 .....	5
<i>Statutes:</i>	
42 U.S.C. §1982 .....	2, 3
42 U.S.C. §3601 <i>et seq.</i> .....	<i>Passim</i>
Pub. L. 92-261 .....	7
<i>Other Authorities:</i>	
United States Commission on Civil Rights, <i>Racism in America</i> .....	7

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1971

No. 71—708

---

PAUL J. TRAFFICANTE, *et al.*,

*Petitioners,*

VS.

METROPOLITAN LIFE INSURANCE COMPANY, *et al.*,

*Respondents.*

---

**BRIEF FOR THE N.A.A.C.P. LEGAL DEFENSE AND  
EDUCATIONAL FUND, INC., AS AMICUS CURIAE**

---

**Interest of the Amicus**

The NAACP Legal Defense and Educational Fund, Inc. is a non-profit corporation formed in 1939 under the laws of the State of New York. It is independent of other organizations and supported by public contributions.

The Legal Defense Fund was founded to assist blacks who suffer racial injustice to secure basic rights through the legal process. We receive many requests for assistance from victims of housing discrimination, and litigate or support numerous cases in state and federal forums to advance the goal of "fair housing throughout the United States" (42 U.S.C. §3601). Our experiences indicate that adequate enforcement of fair housing laws requires a broad definition of the classes of persons entitled to commence administrative and judicial proceedings. We believe that the

decision of the courts below, denying the right of tenants to challenge discriminatory actions of their landlord which prevent the meaningful racial integration of the large housing development in which they live, misconceives the intent of Congress and undermines the promise of fair housing made by federal law.

The Legal Defense Fund was permitted to participate as *amicus curiae* in the court below. All parties have consented to our filing a brief *amicus curiae* in this Court, and their letters of consent have been lodged with the Clerk.

### Argument

The issue in this case is the decision of the United States Court of Appeals for the Ninth Circuit, 446 F.2d 1158, that present residents of the Parkmerced housing development in San Francisco, California, lack standing to challenge racially discriminatory practices of their landlord which have created an almost totally segregated white community. There are two reasons why this judgment should be reversed and petitioners allowed to complain that their landlord has violated the Fair Housing Act of 1968, 42 U.S.C. §§3601-19, and the Civil Rights Act of 1866, 42 U.S.C. §1982. The first is that Parkmerced's discrimination has injured them by preventing the racial integration of the community in which they live, and this injury entitles them to standing. The second is that in addition to seeking a remedy for their own injury, petitioners advance the interests of both blacks who have been denied apartments in Parkmerced and the public which has a vital stake in the enforcement of fair housing laws. The force of neither reason is diminished by the Attorney General's power to bring "pattern or practice" suits, 42 U.S.C. §3613, to enforce the Fair Housing Act of 1968.

***A. The Injury to Present Tenants Caused By Their Landlord's Actions to Prevent the Racial Integration of Their Community Gives Them Standing to Bring This Lawsuit.***

The Fair Housing Act of 1968 describes a person who has the right to invoke the administrative process of investigation and conciliation, and then follow it by a judicial action if conciliation fails, as "any person who claims to have been injured by a discriminatory housing practice" or a "person aggrieved". 42 U.S.C. 3610(a) and (d).<sup>1</sup> The Civil Rights Act of 1866 contains no definition of the persons entitled to enforce it. Standing to enforce the 1866 Act is limited only by the "cases" and "controversies" requirements of Article III of the Constitution, which this Court interprets to require a "personal stake in the outcome of the controversy," *Baker v. Carr*, 369 U.S. 186, 204, and the further requirement that the "interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question," *Association of Data Processing Organizations v. Camp*, 397 U.S. 150, 153. Under both new and old fair housing acts complainants must be allowed to prove their allegations if they properly claim "injury" or a "personal stake", and an "interest" related to the objective of fair housing.

Petitioners' claimed injury<sup>2</sup> is as serious and fundamental as any in our society. It is a claim that segregation diminishes the well-being of the majority just as it victimizes minorities. No less than "aesthetic and environmental well-being," the opportunity of racial groups to live

<sup>1</sup> Presumably the same standard applies to enforcement actions under 42 U.S.C. §3612.

<sup>2</sup> As it was obligated to do on a motion to dismiss, the Court of Appeals accepted petitioners' allegations of injury and discrimination as true. 446 F.2d at 1162, fn. 8.



together is an "important ingredient of the quality of life in our society . . . deserving of legal protection through the judicial process." *Sierra Club v. Morton*, — U.S. —, 40 U.S.L.W. 4397, 4400. Moreover, the residents of Parkmerced claim they are "among the injured." *Ibid*. They assert a "personal stake" in a community where the common experiences of blacks and whites allow both an alternative to the mutually degrading experience of enforced segregation. They claim that the segregation of *their* community has resulted from systematic racial discrimination by *their* landlord.<sup>3</sup>

Not only is their injury serious, and their stake personal, but the interest of petitioners in residential integration is clearly central to the purpose of the fair housing laws. These laws protect the rights of minorities seeking housing from discriminatory refusals, conditions, advertising, and misrepresentations, 42 U.S.C. §3604(a-d), and in that way enable the creation of racially integrated neighborhoods. They also protect the right of majority and minority alike to live in already integrated neighborhoods by prohibiting "blockbusting," 42 U.S.C. §3604(e), the real estate practice of causing the re-segregation of integrated neighborhoods. They establish a national policy which is no less than "fair housing throughout the United States." 42 U.S.C. §3601.

Indeed, neither court below held that the injury alleged by petitioners lacked significance or that the interest asserted was unprotected by the fair housing laws. Their argument appears to be that the Fair Housing Act of 1968 entrusts the responsibility of protecting the public in-

---

<sup>3</sup> Whether residents of the greater community are entitled to sue is not involved here. This case concerns tenants having a direct relationship with a discriminating landlord in a dispute which affects their immediate neighborhood.

terest in fair housing and creating integrated communities exclusively to the Attorney General. This argument seriously misconstrues the enforcement powers of the Attorney General.

The Fair Housing Act authorizes the Attorney General to bring actions to enjoin a "pattern or practice" of discrimination or when a denial of fair housing rights "raises an issue of general public importance." 42 U.S.C. §3613. This has been interpreted to mean that he may not litigate an "isolated or accidental or peculiar event", *United States v. West Peachtree Tenth Corporation*, 437 F.2d 221, 227 (5th Cir. 1971). However, nothing in the language or history of the Act suggests that this limitation on the Attorney General's power should operate to exclude injured private parties from complaining about discriminatory patterns and practices or raise issues of general public importance. The limitations on the power of the Attorney General are far better read as an effort to conserve and focus the Attorney General's limited resources to enforce the fair housing laws than read as an indication that Congress intended to limit the right of aggrieved persons to seek private enforcement of these laws. It is simply contrary to the national fair housing policy to judicially create a limitation on enforcement where no such limitation exists in the laws Congress enacted.

***B. Present Residents May be the Only or Most Effective Adversary Who Can Enforce the Fair Housing Laws, and They also Serve the Public Interest in Doing So.***

In addition to their own direct interests as residents of Parkmerced, petitioners' complaint serves the interests of blacks who have been discriminated against at Parkmerced as well as the public interest in the enforcement of the fair housing laws.

In deciding this case, the Court should take account of the realities of discrimination in the housing market. The experience of *amicus* has shown that few persons discriminatorily denied housing will actually pursue the legal remedies available to them. Many victims of housing discrimination may not even be aware of the fact that they were rejected for racial reasons. Most landlords adeptly find plausible non-racial excuses to hide discriminatory refusals and protect themselves from lawsuits. Our experience with a substantial number of fair housing complaints demonstrates that black applicants are daily turned away from "white" housing on the landlord's representation that:

"The apartment we advertised was rented just an hour ago;" or

"The only vacancy we have is an apartment renting for \$50 a month more than that;" or

"I'm sorry, but we don't accept tenants with pets (children) (large families) (etc.);" or

"You'll have to fill out an application with a letter of reference from your employer (a local bank) (your former landlord) (a present tenant) (etc.)."

Yet the applicants often have no way of knowing whether these representations are true or whether they are subterfuges for discouraging the applicant and denying fair housing. In the experience of *amicus* only a relative handful of fair housing cases can be successfully litigated without advance preparation, the assistance of a fair housing committee, white and black "testers," and the ability to spend the time, effort and expense of pressing a complaint through administrative agencies or the courts. Most applicants for housing are obviously not prepared for all this. The consequence is that many landlords discriminate with little fear of being caught. However, there are occasions

when the landlord's tenants enjoy a vantage point which enables them to know that racial exclusion is practiced.<sup>4</sup> They may know when apartments are actually available, and when terms are discriminatorily varied for blacks. In these situations the tenants of a discriminating landlord may be "the only effective adversary" to challenge racially exclusive practices, *cf. Barrows v. Jackson*, 346 U.S. 249, 259, *Eisenstadt v. Baird*, — U.S. —, 40 U.S.L.W. 4303, 4305, and it would further the national fair housing policy to allow them to assume that burden.

Just as petitioners' efforts advance the interest of minority group members who have been victimized by discrimination, they correspondingly advance the public interest in enforcement of fair housing laws. In doing so petitioners fill a void in the capability of public agencies to enforce these laws. The administrative mechanism established by the Fair Housing Act of 1968 can only make a minimal contribution to realizing the national policy of fair housing. Under the 1968 Act, the Department of Housing and Urban Development may receive, investigate, and attempt to conciliate complaints, but it has no cease and desist powers or other coercive means of enforcing the laws. See 42 U.S.C. §3610(a).<sup>5</sup> "[T]he limited size of

---

<sup>4</sup> Of course, many black people are aware of pervasive race prejudice in some areas and do not even apply for housing and subject themselves to the humiliation of a refusal. A report of the United States Commission on Civil Rights states that

"Many minority group members no longer even try to find homes in all-white areas because they fear they will 'get the run-around' or receive hostile treatment from at least some neighbors. So the pattern of exclusion is continued—in spite of recent laws and court decisions to the contrary." *Racism in America*, (U.S. Gov't. Printing Office, January 1970).

<sup>5</sup> The Department of Housing and Urban Development still lacks the power to go to court recently granted to the Equal Employment Opportunity Commission. See Equal Employment Opportunity Act of 1972, Pub. L. 92-261.

the Attorney General's staff for civil rights enforcement," in comparison to the enormity of the task of assuring "fair housing *throughout* the United States" (42 U.S.C. §3601, emphasis added), renders it impossible to rely on the Attorney General to undertake all the public enforcement which is necessary to make the national fair housing policy a reality. Without private actions the public interest in fair housing enforcement would be poorly served.

This Court and lower courts recognize that the primary burden of enforcing anti-discrimination laws must fall on private litigants, acting in effect as "private attorney general." *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402; *Hutchings v. United States Industries, Inc.*, 428 F.2d 303, 310 (5th Cir. 1970); *Bowe v. Colgate-Palmolive Co.*, 416 F.2d 711, 719-20 (7th Cir. 1969); *Pettway v. American Cast Iron Pipe Co.*, 411 F.2d 998, 1005 (5th Cir. 1969); *Jenkins v. United Gas Corp.*, 400 F.2d 28, 32-33 (5th Cir. 1968); *Oatis v. Crown Zellerbach Corp.*, 398 F.2d 496, 499 (5th Cir. 1968). This is consistent with the general proposition that once a person has properly invoked review "that person may argue the public interest in support of his claim." *Sierra Club v. Morton*, — U.S. —, 40 U.S.L.W. at 4400. Private persons affected by unlawful discrimination should not be required to depend on the Attorney General to decide whether to commit scarce government resources to a particular case. They must be permitted to protect their own interests and, in so doing, advance the interest of both racial minorities and the public in fair housing.

---

\* Memorandum of the United States in Support of Petition for Certiorari, p.4.

**CONCLUSION**

The judgment below should be reversed.

Respectfully submitted,

**JACK GREENBERG**  
**JAMES M. NABBIT, III**  
**CHARLES STEPHEN RALSTON**  
**MICHAEL DAVIDSON**  
10 Columbus Circle  
New York, New York 10019

**WILLIAM BENNETT TURNER**  
**ALICE DANIEL**  
**LOWELL JOHNSTON**  
12 Geary Street  
San Francisco, California 94108  
*Attorneys for Amicus Curiae*





No. 71-708

May 8, 1972 - Petitioners' brief on the merits filed. NOT PRINTED.

Oct. 27, 1972 - Reply brief of petitioners filed. NOT PRINTED.

# INDEX

Opinions below.....	Page
Jurisdiction.....	1
Question presented.....	1
Statutes involved.....	2
Interest of the United States.....	2
Statement.....	3
Argument.....	3
Introduction and summary.....	6
I. Petitioners are within the terms of Section 810 as "persons aggrieved" by a discriminatory housing practice..	10
II. The Purpose of Title VIII confirms that incumbent tenants have standing to sue their landlord for his refusal to rent to non-whites on the basis of race when the tenants have been injured by such discriminatory housing practices.....	11
III. The fact that the Attorney General is empowered to sue when there is a "pattern or practice" of discrimination does not preclude private suits in such situations.....	20
Conclusion.....	22

## CITATIONS

Cases:

<i>Allen v. State Board of Elections</i> , 393 U.S. 544.....	16, 21
<i>Association of Data Processing Service Organiza-</i> <i>tions, Inc. v. Camp</i> , 397 U.S. 150.....	17
<i>Barlow v. Collins</i> , 397 U.S. 157.....	17

## II

### Cases—Continued

	Page
<i>Barrows v. Jackson</i> , 346 U.S. 249.....	19
<i>Federal Communications Commission v. Sanders Bros. Radio Station</i> , 309 U.S. 470.....	17
<i>Griffin v. Breckenridge</i> , 403 U.S. 88.....	20
<i>Griggs v. Duke Power Co.</i> , 401 U.S. 424.....	20, 21
<i>J. I. Case Co. v. Borak</i> , 377 U.S. 426.....	21
<i>Jones v. Alfred Mayer Co.</i> , 392 U.S. 409.....	9, 20
<i>Hackett v. McGuire Brothers, Inc.</i> , 445 F. 2d 442.....	10
<i>Kennedy Park Homes Ass'n v. City of Lackawanna</i> , 318 F. Supp. 669, affirmed, 436 F. 2d 108, certiorari denied, 401 U.S. 1010....	17
<i>Newman v. Piggie Park Enterprises</i> , 390 U.S. 400.....	16, 21
<i>Nyquist v. Lee</i> , 402 U.S. 935, affirming, 318 F. Supp. 710.....	18
<i>Perkins v. Matthews</i> , 400 U.S. 379.....	21
<i>Sierra Club v. Morton</i> , No. 70-34, decided April 19, 1972.....	17
<i>Sullivan v. Little Hunting Park</i> , 396 U.S. 229..	19
<i>Udall v. Tallman</i> , 380 U.S. 1.....	20
<b>Constitution, statutes:</b>	
Article III of the Constitution.....	17
Civil Rights Act of 1866, 42 U.S.C. 1982..	2, 4, 6, 20
Civil Rights Act of 1968:	
Title VII:	
42 U.S.C. 2000a.....	21
42 U.S.C. 2000c.....	21
42 U.S.C. 2000e.....	21
42 U.S.C. 2000e-5.....	10
42 U.S.C. 2000e-5(a).....	10
42 U.S.C. 2000e-5(e).....	10
Title VIII:	
42 U.S.C. 3601-3619 (Fair Housing Act) ..	2,
	6, 7, 12, 13, 14

### III

#### Constitution, statutes—Continued

	Page
42 U.S.C. 3601-----	3, 12
42 U.S.C. 3602(d)-----	10
42 U.S.C. 3604-----	4, 7, 11
42 U.S.C. 3605-----	7
42 U.S.C. 3607-----	7
42 U.S.C. 3608-3611-----	3
42 U.S.C. 3610-----	2, 3, 6, 7, 8, 10
42 U.S.C. 3610(a)-----	2, 4, 5, 6, 8, 10, 15, 19
42 U.S.C. 3610(c)-----	4
42 U.S.C. 3610(d)-----	2, 4, 8, 10
42 U.S.C. 3612-----	3, 5, 8, 9, 11
42 U.S.C. 3612(a)-----	8
42 U.S.C. 3612(b)-----	8
42 U.S.C. 3612(c)-----	8
42 U.S.C. 3613-----	3, 8, 20
42 U.S.C. 3614-----	8
42 U.S.C. 3631-----	3

#### Miscellaneous:

114 Cong. Rec. (1968):

H.R. 2516, 90th Cong., 2d Sess.-----	8
2270-----	8
2271-----	9
2271-2272-----	9, 11
2274-----	12
2277-----	13
2277-2278-----	14
2278-----	9
2279-2280-----	12
2524-2528-----	12
2540-----	14
2704-----	12
2705-----	12
2706-----	12, 13
2991-2992-----	14
2993-----	14, 16

## IV

~~H.R. 2516, 90th Cong., 2d Sess.~~ Continued

	Page
3124 .....	13
3127 .....	14
3348 .....	16
3421 .....	14
3422 .....	13, 14
3426 .....	8
3427 .....	8
4064 .....	8
4065 .....	8
4570 .....	8
4570-4573 .....	9
4573 .....	9
4574 .....	12
5515 .....	16
5992 .....	9
6000 .....	15
9572 .....	12
9599 .....	14, 16
9604 .....	16
9621 .....	9
<i>Hearings on H. Res. 1100 before the House Committee on Rules, 90th Cong., 2d Sess. (1968)</i> .....	9, 12
<i>Hearings before the Subcommittee on Housing and Urban Affairs of the Senate Committee on Banking and Currency on S. 1358, S. 2114, and S. 2280, 90th Cong., 1st Sess. (1967)</i> .....	9,
	12, 13, 14, 19
S. 1358, 90th Cong., 1st Sess. ....	8

# **In the Supreme Court of the United States**

**OCTOBER TERM, 1971**

---

**No. 71-708**

**PAUL J. TRAFFICANTE, ET AL., PETITIONERS**

**v.**

**METROPOLITAN LIFE INSURANCE COMPANY, ET AL.**

---

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT**

---

**BRIEF FOR THE UNITED STATES AS AMICUS CURIAE**

---

## **OPINIONS BELOW**

The opinion of the court of appeals is reported at 446 F.2d 1158 (Pet. App. A, 1-9). The opinion of the district court is reported at 322 F. Supp. 352.

## **JURISDICTION**

The judgment of the court of appeals was entered on August 6, 1971, and a petition for rehearing en banc was denied on September 13, 1971. The petition for a writ of certiorari was filed on November 26, 1971, and was granted on February 22, 1972. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

## QUESTION PRESENTED

The United States will discuss the following question:

Whether, under Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-3619, tenants in an apartment complex have standing to maintain a suit against their landlord for his refusal to rent to non-whites on the basis of race.<sup>1</sup>

## STATUTE INVOLVED

Section 810 of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3610, provides in relevant part:

(a) Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a complaint with the Secretary. \* \* \*

(d) If within thirty days after a complaint is filed with the Secretary or within thirty days after expiration of any period of reference under subsection (c) of this section, the Secretary has been unable to obtain voluntary compliance with this subchapter, the person aggrieved may, within thirty days thereafter, commence a civil action in any appropriate United States district court, against the respondent named in the complaint, to enforce the rights granted or protected by this subchapter, insofar as such rights relate to the subject of the complaint: \* \* \*

<sup>1</sup> Petitioners also rely upon the Civil Rights Act of 1866, 42 U.S.C. 1982. See notes 6, 36 *infra*.



## INTEREST OF THE UNITED STATES

In 1968, Congress enacted Title VIII of the Civil Rights Act to implement the "policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. 3601. The fulfillment of this objective depends in large measure on the resources available for enforcement. While the Department of Housing and Urban Development and the Attorney General have important responsibilities under Title VIII,<sup>2</sup> complaints by private persons are the principal method of securing compliance with the fair housing provisions, whether through conciliation or litigation.<sup>3</sup> Accordingly, the United States has a substantial interest in this case, where the issue concerns the class of persons entitled to prosecute complaints under Title VIII.<sup>4</sup>

## STATEMENT

Petitioners Trafficante, a white, and Carr, a Negro, are tenants in Parkmerced, an apartment complex in San Francisco, California, having approximately 8000 residents, less than one percent of whom are non-white (Pet. App. C, at 2). On May 13, 1970, they filed separate complaints with the Secretary of Housing and Urban Development pursuant to Section 810 of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3610, which provides in pertinent part that complaints may be filed by "Any person who claims to

<sup>2</sup> See 42 U.S.C. 3608-3611, 3613, 3631.

<sup>3</sup> See 42 U.S.C. 3610, 3612.

<sup>4</sup> The United States participated as *amicus curiae* in the court of appeals and in support of the petition for certiorari in this case.

have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter 'person aggrieved')," 42 U.S.C. 3610(a). (Pet. App. C, at 5.) They alleged that Metropolitan Life Insurance Company, then owner of Parkmerced, had discriminated against non-whites on the basis of race in the rental of apartments within the complex, in violation of Section 804 of Title VIII, 42 U.S.C. 3604. (*Ibid.*)

Pursuant to 42 U.S.C. 3610(c), HUD notified the appropriate state agency in California of their complaints (*ibid.*). After the state agency referred the complaints back to HUD because it did not have adequate resources to deal with the charges,<sup>5</sup> and after HUD had failed to secure voluntary compliance within 30 days, petitioners Trafficante and Carr brought this action against Metropolitan in the United States district court under 42 U.S.C. 3610(d).

Their complaint alleged that, in violation of Title VIII, Metropolitan had discriminated against non-white rental applicants by, among other things, making it known to them that they would not be welcome at Parkmerced; manipulating the waiting lists for apartments and delaying action on their applications; and adopting and applying discriminatory acceptance standards (Pet. App. C, at 3-4).<sup>6</sup> They claimed that, as a result of these practices, they had been injured

<sup>5</sup> Pet App. A, at 2 n. 1.

<sup>6</sup> The complaint also sought relief on the basis of 42 U.S.C. 1982 (Pet. App. C, at 6).

in the following respects: (a) they had been deprived of the social benefits of living in an integrated community; (b) they had lost the business and professional advantages they would have derived from living with members of minority groups; and (c) they had been "stigmatized" within the community as residents of a "white ghetto," and had thereby suffered embarrassment and economic damages in "social, business and professional activities" (Pet. App. C, at 4-5). Plaintiffs sought an order directing Metropolitan to cease and desist from engaging in discriminatory housing practices, an award of actual and punitive damages, and reasonable attorneys' fees (Pet. App. C, at 7).

Later, the Committee of Parkmerced Residents Committed to Open Occupancy and other Parkmerced tenants filed a complaint in intervention under Section 812 of Title VIII, 42 U.S.C. 3612, which substantially repeated the allegations of the original complaint; also, Parkmerced Corporation, which acquired the apartment complex from Metropolitan after the original complaint had been filed, was joined as a defendant (Pet. App. A, at 2).

The district court held that petitioners were not within the class of persons entitled to sue under Title VIII and dismissed the complaints. The court of appeals affirmed on the same basis (Pet. App. A). Although recognizing that the language in the statute authorizing suit by any person "who claims to have been injured by a discriminatory housing practice," 42 U.S.C. 3610(a), is "very broad" (*id.* at 4 n. 6), the court of appeals construed the statute narrowly to

permit complaints only by "persons who are the objects of discriminatory housing practices" (*id.* at 6).'

## ARGUMENT

### INTRODUCTION AND SUMMARY

The issue in this case is one of statutory interpretation: are tenants "persons aggrieved" within the meaning of Section 810 when they have been injured by their landlord's discriminatory housing practices against non-white rental applicants? If only the language of the statute were considered we think there would be no doubt that such tenants have standing to sue as "persons aggrieved." They "have been injured by a discriminatory housing practice" and, on its face, Section 810(a) requires no more.

The legislative history of the Fair Housing Act points in the same direction. The Act was intended to eliminate the harmful consequences to both whites and non-whites of racial discrimination in housing. The damage to incumbent tenants from their landlord's exclusion of non-whites may differ from the damage to persons who are the direct objects of discrimination. But Congress recognized, throughout its consideration of the Act, the kind of injury alleged by petitioners here as incumbent tenants, and in Section 810 required only that the complainant's injury result from discriminatory housing practices.

Moreover, private complaints are the primary method of securing compliance with the Act. There is

---

<sup>1</sup> The court of appeals also held, as had the district court, that petitioners had no standing to sue under 42 U.S.C. 1982 (Pet. App. A, at 7-9). See note 36 *infra*.

no reason why Congress would have intended to exclude any group of persons who could be expected to seek enforcement in order to redress the injury they sustain, especially incumbent tenants who are in a position to know of their landlord's practices and who incur a continuing injury even when those who have been unlawfully turned away satisfy their housing needs elsewhere before the landlord's violation can be remedied.

Before turning to the specific question presented by this case, we will first discuss briefly the structure of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-3619, commonly known as the Fair Housing Act. The Act prohibits discrimination on the basis of race, color, religion, or national origin in the sale or rental of housing by private owners, real estate brokers, and financial institutions. 42 U.S.C. 3604, 3605, 3607. Specifically, it is unlawful to refuse to rent or negotiate for rental because of race or color; to discriminate against any person in the terms, conditions, or privileges of rental because of race or color; or to represent to any person because of race or color that a dwelling is not available for rental when the dwelling is in fact available. 42 U.S.C. 3604.

The Secretary of Housing and Urban Development, is empowered to receive and investigate complaints regarding discriminatory housing practices. 42 U.S.C. 3610. The Secretary must defer to state agencies that can provide relief, but if the state agency does not act the Secretary may seek to resolve the complaint "by informal methods of conference, conciliation, and per-

suasion." 42 U.S.C. 3610(a). If these attempts fail, the complainant may proceed to court under Section 810 (d). 42 U.S.C. 3610(d).

Also, a person aggrieved may proceed under Section 812 by bringing an action in court within 180 days after the alleged discriminatory housing practice occurred. 42 U.S.C. 3612. The court may appoint an attorney for the complainant, may grant as relief an injunction, and may award actual damages and punitive damages up to \$1,000, together with costs and attorney fees. 42 U.S.C. 3612(b) and (c).

In addition, under Section 813 the Attorney General may bring a civil action in federal court whenever he has reasonable cause to believe that any person "is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted" by the Act. 42 U.S.C. 3613. Such suits by the Attorney General, as well as suits by private persons under Section 812, shall "be in every way expedited." 42 U.S.C. 3614.

Thus, complaints by private persons under Section 810 or Section 812 are the primary method of securing compliance with Title VIII.<sup>a</sup> And, in our view, incum-

<sup>a</sup> Section 810 is derived from Section 11 of S. 1358, 90th Cong., 1st Sess., which Senator Mondale offered as an amendment to H.R. 2516—the bill that eventually became the Civil Rights Act of 1968. 114 Cong. Rec. 2270 (1968). (As introduced and passed in the House, H.R. 2516 did not contain a fair housing title.)

After a number of cloture motions failed, see 114 Cong. Rec. 3426, 3427, 4064, 4065, the Senate passed Senator Mondale's motion to table his proposed amendment. 114 Cong. Rec. at 4570. Senator Dirksen then introduced a substitute amendment to H.R. 2516,



bent tenants alleging that they have been injured by their landlord's discriminatory housing practices against non-white rental applicants are entitled to file such complaints with the Secretary and may thereafter sue in court if the Secretary is unable to settle the matter through informal means.

which also contained a fair housing title. 114 Cong. Rec. at 4570-4573.

The Dirksen substitute, which the Senate later passed, 114 Cong. Rec. at 5992, and the House subsequently agreed to, 114 Cong. Rec. at 9621, retained from the Mondale amendment the provision in Section 810(a) allowing complaints to be filed by "[a]ny person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter 'person aggrieved')."

Section 812 is derived from the Dirksen substitute, which deleted the provisions in the Mondale amendment that would have empowered the Secretary to hold hearings and issue cease and desist orders upon complaint or on his own initiative, which orders would have been enforceable in court. See 114 Cong. Rec. at 2271-2272, 4573. (Under the Mondale amendment a complainant could also sue in court if the Secretary declined to resolve a charge or if the person aggrieved refused to consent to a settlement, see 114 Cong. Rec. at 2271 (Section 11(a)).

There are no Committee reports on Title VIII either in the House or the Senate. However, the Senate held extensive hearings on S. 1358—the Mondale amendment, see *Hearings before the Subcommittee on Housing and Urban Affairs of the Senate Committee on Banking and Currency on S. 1358, S. 2114, and S. 2280*, 90th Cong., 1st Sess. (1967), and these were frequently referred to in the floor debates, see 114 Cong. Rec. at 2278 (Sen. Mondale); *Jones v. Alfred Mayer Co.*, 392 U.S. 409, 415 n. 16. Also, the House held hearings on the bill as passed by the Senate, see *Hearings on H. Res. 1100 before the House Committee on Rules*, 90th Cong., 2d Sess. (1968).



-I-

PETITIONERS ARE WITHIN THE TERMS OF SECTION 810 AS  
 "PERSONS AGGRIEVED" BY A DISCRIMINATORY HOUSING  
 PRACTICE

Section 810, pursuant to which petitioners Trafficante and Carr brought this action, provides in relevant part that "[a]ny person who claims to have been injured by a discriminatory housing practice \* \* \* (hereafter 'person aggrieved')" may file a complaint with the Secretary and, if the complaint is not resolved, may bring a civil action in court, 42 U.S.C. 3610 (a) and (d). Construing a similar "standing" provision in Title VII of the Civil Rights Act of 1968, 42 U.S.C. 2000e-5,\* the Third Circuit has held that the language Congress used "shows a congressional intention to define standing as broadly as is permitted by Article III of the Constitution." *Hackett v. McGuire Brothers, Inc.*, 445 F. 2d 442, 446 (C.A. 3).<sup>10</sup> Here, the court below itself recognized that the relevant language in Section 810(a) is "very broad" (Pet. App. A, at 4 n. 6).

Under the above-quoted language of Section 810(a), it seems apparent that petitioners Trafficante and Carr are "persons aggrieved": each is a "person," see 42 U.S.C. 3602(d); each "claims to have been injured by a

---

\* Under that Section, charges may be filed with the Equal Employment Opportunity Commission by "a person claiming to be aggrieved" by an unlawful employment practice, 42 U.S.C. 2000e-5(a); if the matter is not resolved by EEOC, the person aggrieved may bring a civil action in court, 42 U.S.C. 2000e-5(e).

<sup>10</sup> The court there held that a pensioner had standing to file a complaint against his former employer charging unlawful employment discrimination against him in the past and against all present and potential non-white employees.

discriminatory housing practice"; and each has alleged acts by his landlord that constitute violations of the Act, see 42 U.S.C. 3604. Moreover, since petitioners' allegations must be treated as true,<sup>11</sup> they are persons who have in fact been injured by discriminatory housing practices that their landlord committed."

## II

THE PURPOSE OF TITLE VIII CONFIRMS THAT INCUMBENT TENANTS HAVE STANDING TO SUE THEIR LANDLORD FOR HIS REFUSAL TO RENT TO NON-WHITES ON THE BASIS OF RACE WHEN THE TENANTS HAVE BEEN INJURED BY SUCH DISCRIMINATORY HOUSING PRACTICES

Although petitioners thus come squarely within the terms of the Act as "persons aggrieved," the court

<sup>11</sup> The court of appeals affirmed the district court's dismissal at the pleading stage for failure to state a claim upon which relief could be granted (see Pet. App. A, at 6 n. 8).

<sup>12</sup> While the original complaint in this case was brought pursuant to Section 810, which authorizes complaints to be filed and suits to be brought by all "persons aggrieved," the complaint in intervention was based on Section 812, which does not contain a standing provision. However, there is nothing to indicate that Congress intended to entitle a narrower class of persons to sue under Section 812 than under Section 810 for redress of the same violations.

Rather, Section 812, which is derived from the Dirksen substitute for the Mondale amendment, see note 8 *supra*, was added in place of the provisions empowering the Secretary of Housing and Urban Development to enforce cease and desist orders in court, *ibid*. Since under the Mondale amendment the Secretary could have issued such orders after charges had been filed by any person aggrieved, see 114 Cong. Rec. at 2271-2272, and since the Dirksen substitute was intended merely to supply a different method of enforcement for the same class of persons, Sections 810 and 812 should not be interpreted differently with respect to standing.

of appeals held that they were not entitled to prosecute complaints because Congress did not intend "to grant standing to sue to any private persons other than the direct victims of discriminatory housing practices proscribed by the Act" (Pet. App. A, at 7). But the purpose of the Fair Housing Act, as revealed by its language and legislative history, lends no support to the limiting construction the court of appeals imposed on the broad language Congress utilized; instead it confirms what the plain meaning of Section 810(a) clearly indicates—that incumbent tenants have standing to maintain actions against their landlord when they have been injured by his discriminatory practices against rental applicants.

The general purpose of the Fair Housing Act is set forth in Section 801: "It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. 3601. When Congress passed legislation to this end in 1968, it did so because of the severe damage that minority groups suffered as a result of housing discrimination<sup>13</sup> and because state laws had not been fully enforced and had therefore proven ineffective.<sup>14</sup>

While it was generally recognized that members of minority groups were damaged the most from dis-

<sup>13</sup> See, e.g., 114 Cong. Rec. 2274 (1968) (Sen. Mondale); *id.* at 2279-2280, 2524-2528 (Sen. Brooke); *id.* at 2704 (Sen. Javits).

<sup>14</sup> See, e.g., *Senate Hearings*, *supra* note 8, at 16 (colloquy between Sen. Mondale and Attorney General Clark); 114 Cong. Rec. 2705, 2706 (1968) (Sen. Javits); *id.* at 4574 (Sen. Dirksen); *id.* at 9572 (Rep. Leggett); *House Hearings (Part I)*, *supra* note 8, at 4 (Rep. Celler).

crimination in housing, proponents of this legislation also emphasized that persons other than those who were the direct objects of discrimination had a substantial interest in ensuring fair housing since they suffered as well.<sup>15</sup> It was pointed out that to a large extent housing patterns had been imposed on home-seekers—both white and non-white<sup>16</sup>—and that the “readiness of Americans to live in mixed neighborhoods is ahead of the policies and practices of the

<sup>15</sup>For example, Senator Javits pointed out that housing discrimination adversely affected not only the person discriminated against but also the people in the community where he had chosen to live. 114 Cong. Rec. at 2706.

<sup>16</sup>A witness at the Senate hearings testified that the “damage of racial injustice and segregation in housing is greatest on the colored people but it is placing a heavy burden on white Americans \* \* \*.” *Senate Hearings, supra* note 8, at 180 (statement of Algernon D. Black, Member of the Board of Directors, American Civil Liberties Union). Others noted that housing segregation contributed to a divided society, with whites and blacks hostile to one another because they had been kept apart by a wall of discrimination. *Id.* at 83 (statement of Commissioner Frankie M. Freeman, United States Commission on Civil Rights); 114 Cong. Rec. at 3124 (Sen. Hatfield).

The Secretary of Housing and Urban Development testified that fair housing legislation was needed to stabilize neighborhoods, thus benefiting both whites and blacks in the community. *Senate Hearings, supra* note 8, at 37; see also *id.* at 21.

And in advocating passage of the Fair Housing Act, Senator Mondale, the author of the provision at issue in this case, see note 8 *supra*, and 114 Cong. Rec. at 2277, stated that “We have learned many times over that in truly integrated neighborhoods people have been able to live in peace and harmony—and both Negroes and whites are richer for the experience.” 114 Cong. Rec. at 3422.

<sup>17</sup>*Senate Hearings, supra* note 8, at 78 (statement of Commissioner Frankie M. Freeman, United States Commission on Civil Rights).

housing establishment.”<sup>17</sup> Landlords and apartment managers, for example, often refused to rent to non-whites on the basis of race not so much out of bigotry but because of business considerations.<sup>18</sup>

Of particular relevance to this case is the example, frequently cited during consideration of the Act,<sup>19</sup> of the discrimination experienced by a black Naval officer when he attempted to rent an apartment in a certain building.<sup>20</sup> The officer, in his testimony at the Senate hearings, included a letter from one of the tenants complaining of the officer's exclusion and stating that “as a tenant, I would neither approve nor want to support a policy as vicious and uncalled for as racial exclusion.”<sup>21</sup> After referring to this officer's plight during the Senate debates, Senator Mondale, the author of the provision at issue in this case, see notes 8 & 14 *supra*, predicted that passage of the Fair Housing Act would dispel fear and ignorance and that “both Negroes and whites [would use] \* \* \* the law in the spirit in which it was intended.” 114 Cong. Rec. at 3422.<sup>22</sup> On the other hand, there is nothing to

<sup>17</sup> *Id.* at 180 (statement of Algernon D. Black, Member of the Board of Directors, American Civil Liberties Union).

<sup>18</sup> See, e.g., 114 Cong. Rec. at 2991-2992, 2993, 3421 (Sen. Mondale); *id.* at 3127 (Sen. Hatfield); *id.* at 9599 (Rep. Corman); *Senate Hearings, supra* note 8, at 35 (statement of Robert C. Weaver, Secretary of Housing and Urban Development).

<sup>19</sup> See, e.g., 114 Cong. Rec. 2277-2278, 2540, 2993, 3422 (1968).

<sup>20</sup> *Senate Hearings, supra* note 8, at 200-204.

<sup>21</sup> *Id.* at 202.

<sup>22</sup> The quotation in the text is taken from the following portion of Senator Mondale's statement (114 Cong. Rec. at 3422):

“We have learned many times over that in truly integrated neighborhoods people have been able to live in peace and har-

indicate that Congress thought it had barred tenants from seeking administrative and judicial relief to prevent discrimination against those attempting to rent or that relief could be obtained only by those persons directly discriminated against.

Indeed, when Congress' evident concern with the injury resulting from discrimination against others is considered together with matters relating to enforcement of the Act, it becomes even more apparent why Congress used the broad language of Section 810(a) to define the persons entitled to file complaints and why incumbent tenants, such as petitioners, were thereby granted standing to sue. Congress knew that the Act would cover more than 52 million housing units," that

mony—and both Negroes and whites are the richer for the experience.

"Thus, a large part of the job that lies ahead of us—that of overcoming ignorance, and teaching the truths of integration—can be assigned to the role of law as a teacher. The same ignorance and fear was present in the debates over public accommodations in the 1964 civil rights law, the same horror stories with a few changes were circulated then. But the law has, on the whole, operated smoothly and well, and both Negroes and whites have used the law in the spirit in which it was intended.

"I believe the same will be true when we pass this measure. There will not be a great influx of all the Negroes in the ghettos into the suburbs—in fact, the laws of supply and demand will take care of who moves into what house in which neighborhood. There will, however, be the knowledge by Negroes that they are free—if they have the money and the desire—to move where they will; and there will be the knowledge by whites that the rapid, block-by-block expansion of the ghetto will be slowed and replaced by truly integrated and balanced living patterns."

<sup>2</sup> 114 Cong. Rec. at 6000.



state laws had made little impact, in part because they had not been enforced,<sup>24</sup> that non-white rental applicants would not always be sure whether they had been rejected or turned away because of their race," and that under the Act complaints by private persons would serve as the primary method of discovering violations and securing compliance.<sup>25</sup> Thus, during the Senate debate, Senator Mondale stressed the need for, in his words, "private attorneys general" to prosecute complaints<sup>27</sup> and successfully opposed amendments that would have discouraged such actions.<sup>28</sup> It is noteworthy too that the only specific objection to the standing provision voiced in either the House or the Senate was that it was too broad.<sup>29</sup>

<sup>24</sup> See note 14 *supra*.

<sup>25</sup> See, e.g., 114 Cong. Rec. at 2993 (Sen. Mondale); *id.* at 9599 (Rep. Corman: "There are the cases where Negroes driving about the city looking for apartments have seen 'for rent' signs in apartment house windows only to find upon inquiry that the apartment has been rented and that the landlord forgot to remove the sign. \* \* \* Those owners who on seeing a nonwhite applicant for an apartment fake records to show that the apartment rents for twice its advertised rate.").

<sup>26</sup> Senator Jordan had objected to the Mondale amendment, see note 8 *supra*, which empowered HUD to issue cease and desist orders, because this would necessitate the hiring of a "whole army of employees" to ensure full enforcement. 114 Cong. Rec. at 3348.

<sup>27</sup> 114 Cong. Rec. at 5515.

<sup>28</sup> This Court has recognized the critical importance of private litigation in the enforcement of civil rights legislation. See, e.g., *Newman v. Piggie Park Enterprises*, 390 U.S. 400, 401-402; *Allen v. State Board of Elections*, 393 U.S. 544, 556-557.

<sup>29</sup> 114 Cong. Rec. at 9604 (Rep. Pucinski).



Here, as this Court stated in *Federal Communications Commission v. Sanders Bros. Radio Station*, 309 U.S. 470, 477, where the relevant statute authorized appeal by all "persons aggrieved" by the Commission's grant or denial of a license, "Congress had some purpose" in using such broad language.<sup>30</sup> We have discussed above the goals Congress sought to achieve and the policies reflected in the Act. It would be inconsistent with these congressional aims for the class of persons entitled to sue under Title VIII to be as limited as the court of appeals held.<sup>31</sup>

Tenants in housing facilities maintained on a segregated basis by their landlord, as well as those who have been excluded because of their race, are injured

---

<sup>30</sup> In our view the standing issue in this case is similar to the question presented in *Sanders* and is unlike *Association of Data Processing Service Organizations Inc., v. Camp*, 397 U.S. 150, and *Barlow v. Collins*, 397 U.S. 159, because in the latter cases the relevant statute did not, as in this case and *Sanders*, have a specific provision conferring standing on a defined class of persons.

Thus, since there is no dispute that petitioners have alleged sufficient injury in fact to comply with Article III requirements, see *Sierra Club v. Morton*, No. 70-34, decided April 19, 1972, the question here is whether Title VIII should be interpreted to confer standing on petitioners and other incumbent tenants similarly situated.

<sup>31</sup> See also *Kennedy Park Homes Ass'n v. City of Lackawanna*, 318 F. Supp. 669, 697 (W.D. N.Y.), affirmed, 436 F. 2d 108, 112 (C.A. 2) (opinion of Mr. Justice Clark), certiorari denied, 401 U.S. 1010, upholding the standing of the Diocese of Buffalo and others to sue under Title VIII of the Civil Rights Act of 1968. Plaintiffs there claimed that the city had discriminatorily rezoned property owned by the Diocese that had been selected as a site for a low-income housing project.

by such illegal practices,<sup>32</sup> as Congress recognized. In their complaint in this case, petitioners have set forth in detail the nature of their injury (see statement, *supra*, p. 5).<sup>33</sup> There is no reason why Congress would have intended to allow suits only by rejected applicants and not by the tenants themselves.

The people already living in an apartment complex are in a position to know whether their landlord is discriminating on the basis of race; they will know the racial composition of their apartment building; they will know whether apartments are vacant while non-white applicants are turned away; and they will know from their own experience how prospective tenants are chosen. Moreover, the continuing injury suffered by incumbent tenants as a result of their landlord's discriminatory practices is often more amenable to effective judicial redress than is the injury to a prospective tenant who has been turned away, since the latter may satisfy his housing needs elsewhere before

---

<sup>32</sup> Compare *Nyquist v. Lee*, 402 U.S. 935, where this Court affirmed a district court decision, 318 F. Supp. 710 (W.D.N.Y.), which sustained the standing of white and black parents to challenge, under the equal protection clause, a New York statute limiting the authority of local school boards to desegregate their schools. The district court's decision was based in large part on the injury suffered by school children attending substantially unracial schools as a result of restrictions on their opportunity to know and attend school with children of other races, 318 F. Supp. at 714.

<sup>33</sup> In addition to pecuniary loss, petitioners claim other injury, the nature of which is described in detail in the affidavit of the Associate Dean of the Harvard Medical School (Pet. App. D) and closely parallels the concerns expressed in Congress during consideration of the Act. See note 15 *supra*.

judicial or administrative relief can be secured.<sup>34</sup> The incumbent tenants, therefore, may often have a substantially greater incentive to bring and prosecute fully a lawsuit, and there is no reason for construing the statutory conferral of standing contrary to this reality and the plain meaning of the language Congress used.

Furthermore, where, as petitioners allege here, non-white applicants are told by the landlord that "residents, management and employees will create a hostile atmosphere" for them if they are accepted (Pet. App. C, at 3), suits by such persons are discouraged. They may not want to live in such a place and may thus be unwilling to sue in order to secure their right to do so. In such situations, suits by the tenants themselves are essential if private litigation is to secure full compliance as Congress intended.<sup>35</sup>

For these reasons, the Secretary of Housing and Urban Development, acting through the Regional Administrator, construed the statute as authorizing complaints to be filed by petitioners Trafficante and Carr as incumbent tenants (Pet. 12). But the court of appeals, by interpreting Section 810(a) to preclude suits by such tenants, apparently has also barred them from filing with the Department complaints seeking

<sup>34</sup> During the Senate hearings, Senator Mondale pointed out that only 12 percent of the complaints filed under state housing laws were satisfactorily closed, in part because "the complainant finds that he cannot wait out the period required for investigation and settlement" (*Senate Hearings*, *supra* note 8, at 16).

<sup>35</sup> See *Sullivan v. Little Hunting Park*, 396 U.S. 229, 237; *Barrows v. Jackson*, 346 U.S. 249, 259; see also note 28 *supra*.

informal conciliatory action. The Secretary's interpretation of the statute he administers is entitled to great weight. *Griggs v. Duke Power Co.*, 401 U.S. 424, 433-434; *Udall v. Tallman*, 380 U.S. 1, 16. In light of this administrative construction, together with the language of the statute itself and Congress' evident purpose in using that language, petitioners are within the class of persons entitled to sue and the court of appeals erred in holding otherwise.<sup>36</sup>

### III

THE FACT THAT THE ATTORNEY GENERAL IS EMPOWERED TO SUE WHEN THERE IS A "PATTERN OR PRACTICE" OF DISCRIMINATION DOES NOT PRECLUDE PRIVATE SUITS IN SUCH SITUATIONS

There is some suggestion in the opinion of the court of appeals that petitioners should not have standing because the Attorney General may sue under Section 813 to correct "patterns and practices" of housing discrimination (see Pet. App. A, at 6-7). But there is nothing in the language or legislative history of the Act to indicate that when a landlord's discrimination rises to such a level that a "pattern or practice" may

---

<sup>36</sup> In our view, proper resolution of the principal issues in this case, which are raised under Title VIII, will make it unnecessary for this Court to reach petitioners' additional contentions under 42 U.S.C. 1982. We note, however, that to the extent petitioner Carr claims to be a victim of tokenism in a housing development that discriminates against members of his race (see Pet. App. D, at 5-11), his complaint seems within the terms of Section 1982 as a claim that he is denied "the same right \* \* \* as is enjoyed by white citizens \* \* \* to \* \* \* lease \* \* \* real \* \* \* property." Cf. *Jones v. Alfred Mayer Co.*, 392 U.S. 409; *Griffin v. Breckenridge*, 403 U.S. 88.

exist, private suits are or should be barred. To the contrary, the more pervasive the discriminatory practices the more need there is for private enforcement.

Congress knew, as this Court itself has recognized, see note 28 *supra*, that in light of the limited size of the Attorney General's staff, private persons would have to be relied upon, even in situations where the Attorney General is empowered to act. (At present, most of the fair housing litigation conducted by the Attorney General is handled by the Housing Section of the Civil Rights Division, which currently has an authorized strength of 22 attorneys.) In such situations, suits by individual plaintiffs are both private and public actions; they act on their own behalf, but they also sue as private attorneys general in vindicating a policy that Congress considered to be of the highest priority. See *Newman v. Piggie Park Enterprises*, 390 U.S. 400, 401-402.<sup>37</sup> To the extent that the court below viewed the availability of a suit by the Attorney General as precluding private litigation, its decision constitutes an unwarranted restriction on the resources available to combat patterns of discrimination in housing.

<sup>37</sup> See also *J. I. Case Co. v. Borak*, 377 U.S. 426, 432; *Allen v. State Board of Elections*, 393 U.S. 544, 556; *Perkins v. Matthews*, 400 U.S. 379, 392, 396.

Civil rights legislation over the past 15 years has generally contained provisions for both public and private enforcement. See, e.g., 42 U.S.C. 2000a (public accommodations); 42 U.S.C. 2000c (public education); 42 U.S.C. 2000e (employment). And the fact that the Attorney General may sue has precluded neither private litigation (see cases cited above) nor the granting of broad relief in private actions, see *Griggs v. Duke Power Co.*, 401 U.S. 424.

**CONCLUSION**

For the foregoing reasons the judgment of the court of appeals should be reversed.

Respectfully submitted.

ERWIN N. GRISWOLD,  
*Solicitor General.*

DAVID L. NORMAN,  
*Assistant Attorney General.*

LAWRENCE G. WALLACE,  
*Deputy Solicitor General.*

A. RAYMOND RANDOLPH, JR.,  
*Assistant to the Solicitor General.*

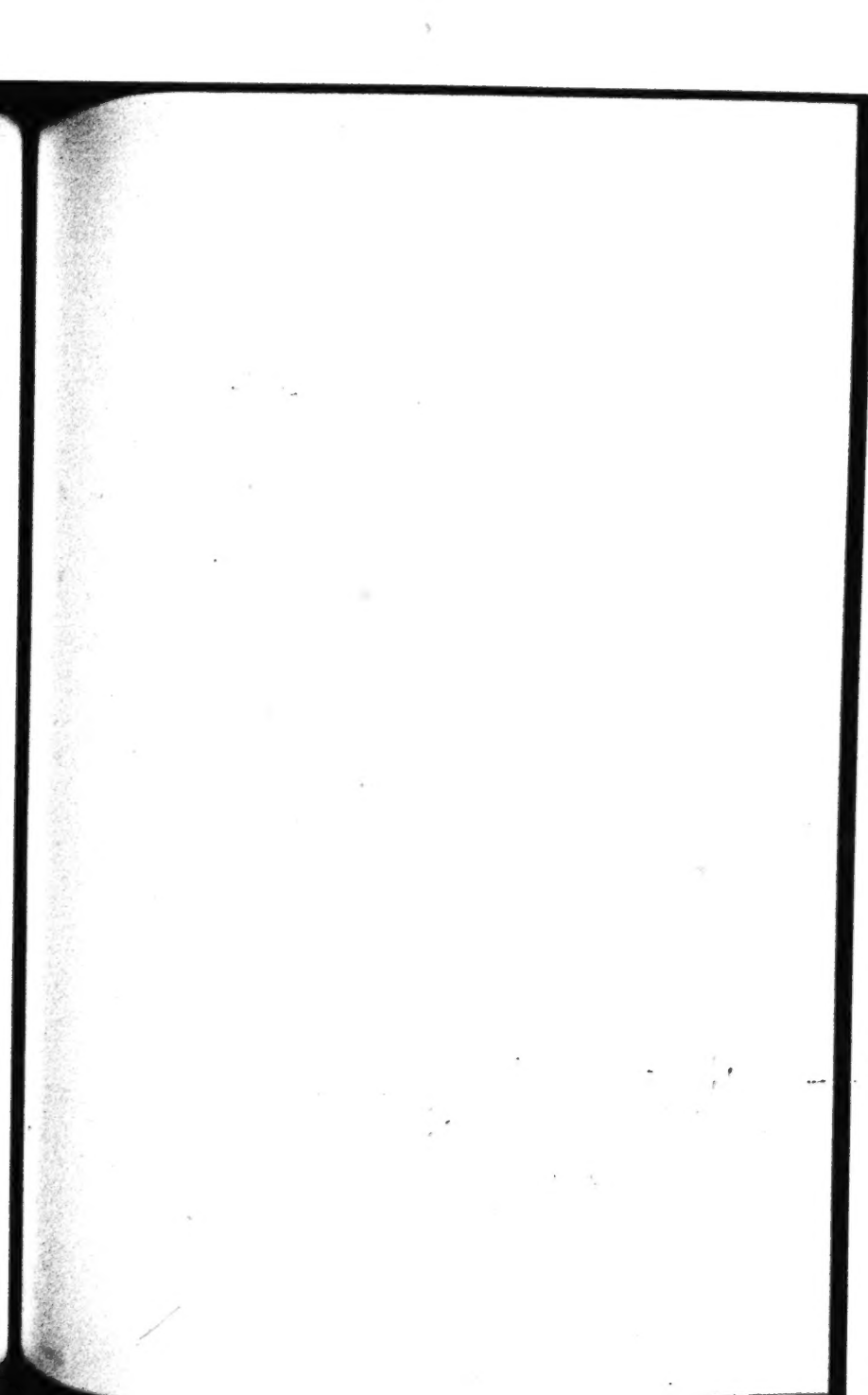
WALTER W. BARNETT,

FRANK E. SCHWELB,

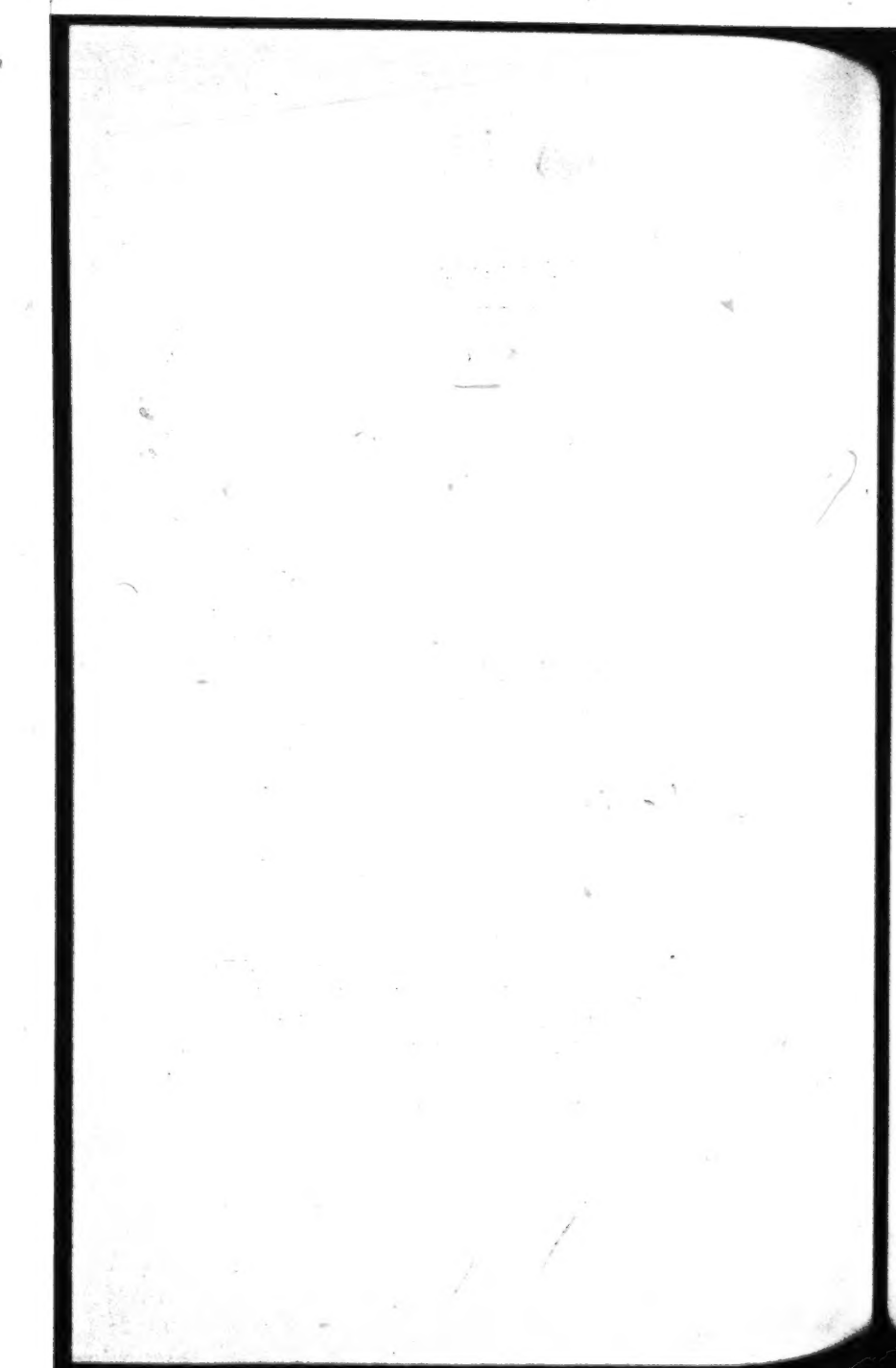
ELLIOTT D. McCARTY,

*Attorneys.*

MAY 1972.







## Subject Index

---

	Page
Opinions below .....	1
Jurisdiction .....	2
Statutes involved .....	2
Question presented .....	2
Interest of the amicus curiae .....	2
Argument .....	13

### I.

The injury to the right of interracial association of black and white tenants of a large apartment complex caused by racially discriminatory practices of their landlord is sufficient to grant them standing to sue under the Fair Housing Act of 1968 and the Civil Rights Act of 1866, §1982 ..... 13

- A. The statutes involved are consistent with plaintiffs' right to sue ..... 13
- B. Decisions on standing are consistent with plaintiffs' right to sue ..... 16

### II.

The clear congressional policy of providing fair housing dictates that it be achieved through enforcement of remedial statutes either by the attorney general or by private persons such as plaintiffs ..... 21

Conclusion ..... 25

## Table of Authorities Cited

Cases	Pages
Allen v. State Board of Elections, 393 U.S. 544 (1969).....	21
Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150 (1970) .....	19, 20
Barrows v. Jackson, 346 U.S. 249 (1953) .....	17, 18, 20
Brown v. Board of Education, 347 U.S. 483 (1954) .....	16
Carter v. Greene County, 396 U.S. 320 (1970) .....	16
Hackett v. McGuire Brothers, Inc., et al., 445 F.2d 442 (3rd Cir. 1971) .....	18
Johnson v. Georgia Highway Express, Inc., 417 F.2d 1122 (5th Cir. 1969) .....	16
Jones v. Mayer, 392 U.S. 409 (1968) .....	16
Kennedy Park Homes Association, Inc. v. City of Lacka- wanna, 436 F.2d 108 (2d Cir. 1970), cert. denied 401 U.S. 1010 (1971) .....	16
Lee v. Nyquist, 318 F.Supp. 710 (W.D.N.Y. 1970) aff'd 402 U.S. 935 (1971) .....	16
Loving v. Virginia, 388 U.S. 1 (1967) .....	16
Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400 (1968) .....	21
Perma-Life Mufflers, Inc., et al., v. International Parts Cor- poration, et al., 392 U.S. 134 (1968) .....	22
Rogers v. Paul, 382 U.S. 198 (1965) .....	16
Shannon v. United States Department of Housing and Urban Development, 436 F.2d 809 (3rd Cir. 1970) .....	16, 18
Sierra Club v. Morton, — U.S. — (40 U.S.L.W. 4397) (1972) .....	19, 20
Southern Alameda Spanish Speaking Organization v. City of Union City, 424 F.2d 291 (1970) (dictum) .....	24
Sullivan v. Little Hunting Park, 396 U.S. 229 (1969).....	16, 17
Walker v. Pointer, 304 F.Supp. 56 (N.D. Tex. 1969).....	17

# TABLE OF AUTHORITIES CITED

iii

## Codes

Government Code:	Pages
Section 35743 .....	7
Section 65302(c) .....	3
<b>Rumford Fair Housing Act of California (California Health and Safety Code):</b>	
Sections 35700 et seq. ....	7
Section 37041 .....	3

## Constitutions

California Constitution, Art. II, Section 3 .....	2
---	---

## Resolutions

Palo Alto City Council Resolution No. 4302 .....	3
--	---

## Rules

United States Supreme Court Rule 42(4) .....	13
--	----

## Statutes

28 U.S.C. Section 1254(1) .....	2
Housing Act of 1954, Section 701 (now 40 U.S.C. §461)...	4
42 U.S.C. Section 1982 .....	2, 13, 16, 17, 19
Civil Rights Act of 1964, Title VII (42 U.S.C. 2000e-5)....	19
42 U.S.C., Section 3531 .....	10
Civil Rights Act of 1968, Title VIII (Fair Housing) (42 U.S.C. Sections 3601, et seq.) .....	2, 9, 12, 13, 20
<b>42 U.S.C.:</b>	
Section 3601 .....	11, 13
Section 3602(d) .....	13, 14
Section 3604 .....	13
Section 3605 .....	13
Section 3606 .....	13
Section 3608(d)(1) .....	9
Section 3608(d)(3) .....	10
Section 3609 .....	10
Section 3610 .....	13, 19
Section 3612(a) .....	14

Other Authorities	Pages
Brief for the United States as Amicus Curiae, 36, Trafficante, et al. v. Metropolitan Life Insurance Company, et al., 446 F.2d 1158 (9th Cir. 1971) .....	11, 14, 21
114 Cong.Rec. 9559 (1968) .....	15
Deutsch, Fair Housing in Santa Clara County, pp. 26-27, 1971 .....	4, 6, 7
Mid-Peninsula Citizens for Fair Housing, Summary of Apartment Discrimination in Palo Alto, California, 3, 1971 (unpublished report available at organization office, 460 California Avenue, Palo Alto, California 94306) ....	6, 23
Palo Alto Times, Feb. 25, 1972, 1, col. 5 .....	6
SCC-JOCHEP, The Housing Situation, 1969 (1969) .....	5
SCC-JOCHEP, The Joint Housing Element, 1971, 1, 6, 105, 106 (1971) .....	5, 7, 8
SCC-JOCHEP, Social Concerns in Housing, 11, 19 (1971) .....	5

**In the Supreme Court**  
OF THE  
**United States**

---

OCTOBER TERM, 1971

---

No. 71-708

---

PAUL J. TRAFFICANTE, et al.,  
*Petitioners,*

VS.

METROPOLITAN LIFE INSURANCE COMPANY, et al.,  
*Respondents.*

---

On Writ of Certiorari to the United States  
Court of Appeals for the Ninth Circuit

BRIEF FOR  
THE CITY OF PALO ALTO, CALIFORNIA  
AS AMICUS CURIAE

---

**OPINIONS BELOW**

The opinion of the District Court for the Northern District of California dismissing the Complaint and Complaint in Intervention in these proceedings is reported at 322 F.Supp. 352 (N.D. Cal. 1971). The opinion of the Court of Appeals for the Ninth Circuit is reported at 446 F.2d 1158 (9th Cir. 1971).

### **JURISDICTION**

The judgment of the Court of Appeals for the Ninth Circuit was entered on August 9, 1971. Thereafter, a petition for a rehearing *en banc* was denied by the Court of Appeals on September 13, 1971. The jurisdiction of this Court is conferred by 28 U.S.C. §1254 (1).

---

### **STATUTES INVOLVED**

The statutes involved are Title VIII of the 1968 Civil Rights Act (Fair Housing) (42 U.S.C. §§3601, *et seq.*) and 42 U.S.C. §1982.

---

### **QUESTION PRESENTED**

Do black and white tenants of a large apartment complex have standing, under Title VIII of the 1968 Civil Rights Act (Fair Housing) (42 U.S.C. §§3601, *et seq.*) and/or 42 U.S.C. §1982, to complain of racially discriminatory rental practices by their landlord?

---

### **INTEREST OF THE AMICUS CURIAE**

The City of Palo Alto, California, is a municipal corporation, existing as a charter city pursuant to California Constitution, Article II, Section 3. It is located on the "mid-peninsula" approximately thirty miles south of San Francisco, west of San Francisco Bay, and immediately adjacent to Stanford University. It contains an area of approximately 25 square miles and a population of approximately 56,-



000. It is one of a continuous string of suburban cities west of the Bay, stretching fifty miles from San Francisco south to San Jose, whose overall population is approximately 2,377,000. Governmentally, it is a part of Santa Clara County, the population of which is approximately 1,100,000.

The city government of Palo Alto as well as certain private segments within it are continuously endeavoring to provide a racially balanced, integrated community. On September 15, 1969, the Palo Alto City Council adopted a "Housing Element" to its General Plan (Resolution No. 4302).<sup>1</sup> Among other community housing goals stated therein are

"To encourage a physical environment which will attract a broad spectrum of people of various interests, *races*, religions, occupations and ages to reside in Palo Alto in order to provide a fullness of social interrelationships . . .

"To encourage, in proper balance to the economic and social requirements of the people of Palo Alto, the development of a variety of residential choices" (emphasis added).

---

<sup>1</sup>Cal. Gov. Code §65302(c) prescribes that the general plan shall include:

"A housing element, to be developed pursuant to regulations established under Section 37041 of the Health and Safety Code, consisting of standards and plans for the improvement of housing and for provision of adequate sites for housing. This element of the plan *shall* make adequate provision for the housing needs of *all* economic segments of the community" (emphasis added).

Cal. Health and Safety Code §37041 requires that the State Commission of Housing and Community Development, in cooperation with the State Council on Intergovernmental Relations and State Office of Planning, develop guidelines for such housing elements by July 1, 1971, to conform to those promulgated by the U. S. Department of Housing and Urban Development (hereafter "HUD").

(Id. at 2, 3). The work program to achieve these goals and to counter the narrowing spectrum of people who can live in Palo Alto consists, in part, of the following: the establishment of low-moderate income households; protecting the ability of *all* housing consumers to choose and occupy housing without discrimination; review of building codes with low and moderate income housing in mind; and the alleviation of housing needs of those displaced by governmental action. (Id. at 9, 10).

On a private level, two of the most active and effective organizations which have fair housing as their main concern are the Mid-Peninsula Citizens for Fair Housing and Stanford Mid-Peninsula Urban Coalition and Operation Sentinel. The former is based in Palo Alto, the latter at Stanford. The Mid-Peninsula Citizens group has a 17-member board of directors, a small budget and many volunteers (about 150-200 available volunteers including trained auditors and testers). Its goal is "to secure for all individuals an equal opportunity to purchase or rent property where they choose."<sup>2</sup>

Despite these and other substantial public and private efforts to achieve fair housing, there still exists

---

<sup>2</sup>For a study discussing these organizations in greater depth, see Deutsch, *Fair Housing in Santa Clara County*, pp. 26-27, 1971; Santa Clara County Planning Department, *Joint Cities-County Housing Element Program*, No. 10, partially financed by a HUD planning grant pursuant to §701 of the Housing Act of 1954 (now 40 U.S.C. §461). The Joint Cities-County Housing Element Program has published a series of pamphlets on county-wide housing problems (hereafter "SCC-JCCHP"). The County of Santa Clara and 15 cities within its boundaries cooperated in this effort under the HUD §701 grant.

a disturbingly high incidence of housing discrimination both in Palo Alto, the Mid-Peninsula, and Santa Clara County. In 1969 the County of Santa Clara published a report entitled "The Housing Situation: 1969."<sup>3</sup> It states in part:

"There is evidence that in at least some areas of the County there has been a movement toward economic and racial/ethnic integration. *It cannot be too heavily stressed, however, that a trend toward segregation has dominated the pattern of change since 1960.* It is desirable that there be differentiation between areas in terms of the character of their housing, environment and populations; but it is detrimental to restrict housing choice by denying an increasing population of residential areas to persons with low to moderate incomes or to minorities . . ." (emphasis added).<sup>4</sup>

More recent surveys by the Mid-Peninsula Citizens for Fair Housing indicate that there appeared to be discrimination against blacks in the rental of apartments in 63 per cent of the 43 buildings contacted in Menlo Park, California, the next city to the north

<sup>3</sup>SCC-JCCHP, The Housing Situation: 1969 (1969).

<sup>4</sup>Id. at 62. Two other publications in this series reach the same conclusion. SCC-JCCHP, Social Concerns in Housing, 11, 19 (1971), states:

"... segregation is becoming more rather than less pronounced. Local and regional activities to reverse this trend have remained in the domain of small, volunteer private groups. While the efforts of these groups are noteworthy, the size of the problem requires an equally sizable effort." (Id. at 19).

Also, SCC-JCCHP, The Joint Housing Element: 1971, 1, 6, 105, 106 (1971).

of Palo Alto;<sup>5</sup> 58 per cent of 43 apartment buildings in Palo Alto itself;<sup>6</sup> 41 per cent of 73 buildings in Mountain View, the next city to the south of Palo Alto;<sup>7</sup> 54 per cent of 77 buildings in Sunnyvale, the next city to the south of Mountain View.<sup>8</sup>

<sup>5</sup>Palo Alto Times, February 25, 1972, at 1, col. 5. The procedures used in these surveys follow:

"1. 20 auditors participated. They all either lived or worked in Palo Alto. Several are teachers or administrators in local school districts; three are housewives. Others are 'professionals', including two lawyers and one nurse.

2. A list of apartment developments in Palo Alto was unavailable from City Hall. The list of apartment developments and their size was compiled from about 50 hours of on-site inspection of areas zoned for apartments, multi-family dwellings and planned communities.

3. The audit was conducted by teams. Each team consisted of one black person and one white person, with matching qualifications. Within each team, effort was made to eliminate all variables except race.

4. Each team audited specific apartment developments. Each auditor visited independently the assigned developments, asked if there were any vacancies, and determined the terms and conditions of rental. Both auditors visited a given development within a few hours of each other. Each auditor filled out a standard form to record his experience at each development. These written reports provided the data for this report." (Mid-Peninsula Citizens for Fair Housing, Summary of Apartment Discrimination in Palo Alto, California, 3, 1971 (unpublished report available at organization office, 460 California Avenue, Palo Alto, California 94306)).

In Menlo Park, between January 22, 1972, and February 14, 1972, auditors visited 30 apartment buildings, containing 965 units, about 40 per cent of all units in the city. It found evidence of discrimination in 19 of the 30 buildings.

<sup>6</sup>Palo Alto Times, *supra*, note 5. Full details of this survey are reported in Mid-Peninsula Citizens for Fair Housing, Summary of Apartment Discrimination in Palo Alto, California, *supra*, note 5. This survey was conducted between July 7-October 13, 1971, at 43 apartment buildings, containing 2632 units, or some 38 per cent of all such units in the city.

<sup>7</sup>Palo Alto Times, *supra*, note 5; Deutsch, Fair Housing in Santa Clara County, *supra*, note 2, at 26. The 73 buildings contained 4100 units, or some 16 per cent of all such units in the city.

<sup>8</sup>Palo Alto Times, *supra*, note 5; Deutsch, Fair Housing in Santa Clara County, *supra*, note 2, at 26. The 77 buildings contain 5455 units, or some 75 per cent of all such complexes having over 20 apartments in the city.

In Santa Clara County it is recognized both governmentally and privately that, while tremendous efforts must be continued on both levels to provide fair housing, they alone will not meet the problem sufficiently.<sup>9</sup> The County of Santa Clara, Planning Policy Committee has recommended adoption of various housing goals by all cities and the county similar

<sup>9</sup>The Planning Policy Committee of Santa Clara County recognizes the real limits of governmental action alone.

"Housing is produced and maintained by private actions. Solutions . . . depend to a very considerable extent upon an understanding of the actions and potential of the private housing market. The role of government is largely to encourage private attempts to improve the housing situation, to regulate abuses in the housing market, and to take direct action when the private market fails to meet critical housing needs." SCC-JCCHP, The Joint Housing Element: 1971, *supra*, note 4, at 73.

The report also cites the ineffectiveness of governmental action to date, both federal, state and local, to substantially reduce discrimination and other housing problems. *Id.* at 78-79. Furthermore, the Rumford Fair Housing Act of California, Cal. Health and Safety Code §§35700 et seq., purports to preempt the regulation of housing discrimination (Cal. Gov. Code §35743), although this position is not necessarily accepted by all local governmental agencies. Because of this, the report concludes (whether rightly or not) that "The basic legal enforcement of fair housing . . . has been left to the federal government." *Id.* at ix.

Similarly, on the basis of interviews with real estate brokers, financial institutions, housing developers, apartment managers, confidential questionnaires completed by public and private agencies, and a review of fair housing laws at all governmental levels, Deutsch concludes: "There is no effective government agency in Santa Clara County working to enforce or promote compliance with the fair housing laws." Deutsch, Fair Housing in Santa Clara County, *supra*, note 2, at 32. That report concludes that both HUD and the state administrative enforcement agency, are remote, slow, understaffed, offer very limited relief, and are not trusted by minorities who view them merely as part of the very establishment which discriminates against them. Nor does the report find that there exists any effective private agency, whether minority or non-minority operated. *Id.* at 7, 19, 33. Significant in this regard is the following comment: ". . . there is little political pressure generated by minority groups in the county to influence the county and city governments to take more active roles in the area of fair housing." *Id.* at 33.

to those stated in the Palo Alto Housing Element of the General Plan.<sup>10</sup> One of these goals declares it to be a matter of public policy "To insure the provisions of decent housing for all persons, regardless of age, income, race, or ethnic background."<sup>11</sup>

It is also worth noting one comment of the Planning Policy Committee's report. Discussing the results of two 1970 studies which attempted to identify housing needs as perceived by groups of county residents, the report states:

"Mexican Americans were shown to have lower perceived needs for housing space than other groups and also to have the greatest disparity between what they perceived that they needed and what they actually had. The sociological study concluded that Mexican-Americans are 'by far the most likely to consider themselves "deprived" even allowing for the fact that their perceptions of what they should have are the lowest.' The anthropologists indicated that Mexican-Americans place a very high value on owning or occupying single family dwellings."<sup>12</sup>

This comment recognizes the reality that few people who are the direct victims of discrimination actually take advantage of remedies available to them. Those unlikely to perceive their housing needs are even less likely, given all their other pressing and immediate family problems, to be thinking, let alone knowledgeable, about their legal rights. Even if they were so

---

<sup>10</sup>See text pp. 2-3 *supra*.

<sup>11</sup>SCC-JCCHP, The Joint Housing Element: 1971, *supra*, note 4, at 136, app. A-1.

<sup>12</sup>*Id.* at 67.

percipient, very few will have the money necessary to pursue their rights. Furthermore, this tendency to be something less than percipient about their housing needs will undoubtedly leave many minority applicants for housing totally unaware that discrimination has been practiced against them. This is due in as large measure to the sophisticated methods of rejection of minority applicants born of the experience of landlords, owners, brokers, etc., as it is to the lack of experience of the minority applicants. The applicant is totally at the mercy of the discriminator as to the truth or falsity of the reason given for rejection. Needless to say, this reduces the likelihood of pursuit of available legal remedies to an insignificant level as against the very high incidence of discriminatory practices.

It needs no citation of authority that both cities, states and the federal government inevitably suffer and pay a great and unnecessary price when racial discrimination is permitted to injure minority applicants for housing. In addition to its primary purpose of benefiting minorities who are the direct victims of discrimination through the passage of the Fair Housing Act of 1968, Congress no less recognized the key importance of local government involvement in achieving its objectives. That Act, among other things, requires the Secretary of HUD to

"make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, *suburban*, and rural . . . (emphasis added)"<sup>13</sup>

<sup>13</sup>42 U.S.C. §3608(d)(1).



and to

"cooperate with and render technical assistance to Federal, State, *local*, and other public or private agencies which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices." (Emphasis added.)<sup>14</sup>

The Act also requires the Secretary to

"consult with State and *local* officials . . . to learn the extent, if any, to which housing discrimination exists in their State or *locality*, and whether and how State or *local* enforcement programs might be utilized to combat such discrimination . . ." (emphasis added).<sup>15</sup>

These statements reflect a congressional recognition that local government is inextricably tied into the problem of housing discrimination and will benefit by its elimination.

---

<sup>14</sup>42 U.S.C. §3608(d)(3).

<sup>15</sup>42 U.S.C. §3609. It is also instructive and relevant to note the provision of federal statutes which establish the U. S. Department of Housing and Urban Development. In 42 U.S.C. §3531, Congress "declares that the general welfare and security of the Nation and the health and living standards of our people require, as a matter of national purpose, sound development of the Nation's *communities* and metropolitan areas in which the vast majority of its people live and work.

"To carry out such purpose, and in recognition of the increasing importance of housing and urban development in our national life," [Congress established HUD] "to assist the President in achieving maximum coordination of the various Federal activities which have a major effect upon urban community, *suburban*, or metropolitan development; to encourage the solution of problems of housing, urban development, and mass transportation through State, *county*, *town*, *village* or other *local* and private action . . . and to provide for full and appropriate consideration, at the national level, of the needs and interests of the Nation's *communities* and of the people who live and work in them." (Emphasis added.)

Congress has clearly declared its commitment to the policy of providing "for fair housing throughout the United States."<sup>16</sup> Yet, the Department of Justice concedes

"that if all litigation of this kind is left to the Attorney General, the Congressional policy in favor of swift elimination . . . of the inequities caused by racial discrimination in housing will be severely hampered, to the injury of the United States and its citizens."<sup>17</sup>

The Ninth Circuit below held that black and white tenants do not have standing to complain of racial discrimination by their landlord against minority applicants. It intimates, further, that only the Attorney General can maintain such actions. The Attorney General pleads inadequate resources.<sup>18</sup>

A substantial level of discrimination exists throughout the County of Santa Clara, including Palo Alto. It may fairly be assumed that such a level is more or less indicative of the national level. This situation persists despite significant local public and private efforts to the contrary. To that extent, the achievement of the public policy of the City of Palo Alto, i.e., to provide a racially balanced, integrated community with equal opportunity in housing for all, is being thwarted. This frustration of adopted city policies is a direct and real injury to the legitimate, rec-

<sup>16</sup>42 U.S.C. §3601.

<sup>17</sup>Brief for the United States as Amicus Curiae, at 36, *Trafficante, et al. v. Metropolitan Life Insurance Company, et al.*, 446 F.2d 1158 (9th Cir. 1971).

<sup>18</sup>*Id.* at 33-36.

ognizable interests of the citizens of Palo Alto in cultural, social and psychological terms as well as economic terms. The injury resulting from the social waste caused by discrimination in housing is equally as significant as the injury that would result from a physical waste of its resources. In this sense, the existence of housing discrimination is inimical and injurious to the public health, safety, morals and welfare.

Congress has declared its policy of fair housing and its goal of integrating communities throughout the country. It is clear that minority applicants for housing do not now, nor is it very likely in the immediate future that they will, take advantage of their legal remedies under the Fair Housing Act of 1968. The Attorney General of the United States has clearly indicated his inability to enforce the provisions of the Act nationwide on a level that will even begin to achieve the Congressional purpose. Unless tenants, such as the plaintiffs in the instant case, are permitted to complain of racially discriminatory rental practices of their landlords, this evil will continue to gut the resources and energies of cities throughout the country, not to mention the demoralization and degradation it will work upon minorities and the deprivation of plaintiffs' rights.

We, therefore, believe that the decision of the Ninth Circuit is wrong as a matter of law. Since the City of Palo Alto, like every other city and county in the country, has a direct and compelling interest in the outcome of this litigation and stands to benefit by a

result favorable to petitioners, we believe we should exercise our right, pursuant to U S. Supreme Court Rule 42(4), to express our view to the Court urging reversal of the decision of the Ninth Circuit.

## ARGUMENT

### I.

**THE INJURY TO THE RIGHT OF INTERRACIAL ASSOCIATION OF BLACK AND WHITE TENANTS OF A LARGE APARTMENT COMPLEX CAUSED BY RACIALLY DISCRIMINATORY PRACTICES OF THEIR LANDLORD IS SUFFICIENT TO GRANT THEM STANDING TO SUE UNDER THE FAIR HOUSING ACT OF 1968 AND THE CIVIL RIGHTS ACT OF 1866, §1982.**

**A. The Statutes Involved are Consistent With Plaintiffs' Right to Sue.**

Congress has broadly declared it to be "the policy of the United States to provide . . . for fair housing throughout the United States." (42 U.S.C. §3601). 42 U.S.C. §§3604, 3605, and 3606 respectively prohibit discrimination in the sale or rental of housing, financing of housing, and provision of brokerage services. 42 U.S.C. §3610 defines a "person aggrieved" as:

"Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur . . ."

The term, "person," defined at 42 U.S.C. §3602(d), ". . . includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies,

joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries."

§3612(a) broadly states that:

"The rights granted by sections 3603, 3604, 3605, and 3606 . . . may be enforced by civil actions . . ." (emphasis added).

Nothing in any of this language limits the right to sue to anyone other than a "person", in the broadest sense of the term, except as limited only by §3602(d). Quite clearly, Congress could have set forth various limitations. That it did not do so indicates that the Ninth Circuit incorrectly found that only "direct victims" may sue (446 F.2d at 1163, 1164), and thereby unreasonably limited the intent of Congress. Nor is there anything in any of the provisions of the Act to suggest that only members of a minority or non-white persons may sue.

It cannot seriously be argued that either the statutory language or purpose support the view of the Ninth Circuit. Rather, Congress intended that the Fair Housing Act be remedial in every sense of the word, and that action should be encouraged as broadly as possible to eliminate housing discrimination.

As pointed out in a quote by the Attorney General in its *amicus curiae* brief, in the court below, the Congressional

"debates suggest a recognition of the harm which segregated housing inflicts on all members of the

public, white as well as black and on the need for action on many fronts to combat it . . .

“The damage of racial injustice and segregation in housing is greatest on the colored people but it is placing a *heavy burden on white Americans, all Americans, too.* (emphasis added)

“The money cost is high; the financial cost of extra services for health, education, welfare, and police. We damage people and then we have to pay a burden which the larger community must bear. Meanwhile, in the very cities where these costs are greater, the tax base in property and the ability to pay income taxes is undermined by the very ills brought by the discriminatory practices. If colored people pay heavily in health, family life, waste of talent, and psychological ways, the majority white population pays heavily too. It pays a tremendous bill in taxes. It also pays by living in a deteriorating situation in which the security of persons and property is endangered.”<sup>10</sup>

Cities, perhaps more than any other entities, understand the tremendous economic and social price to be paid for allowing racial discrimination to persist. In view of the testimony presented to Congress during its consideration of this legislation, it seems fair to say that Congress more likely intended to be expan-

<sup>10</sup>Id. at 10-11. See 114 Cong.Rec. 9559 (1968) (remarks of Rep. Celler):

“To the extent that residential segregation prevents states and municipalities from carrying out their *obligations* to promote equal access and equal opportunity in *all* public aspects of community life, the 14th Amendment authorizes removal of blight.” (emphasis added).

sive as to who may sue to achieve the desired national policy, rather than restrictive, as the court below has been. Such a conclusion is consistent with civil rights cases that have rendered liberal interpretations with a view toward eliminating racial discrimination. See *Sullivan v. Little Hunting Park*, 396 U.S. 229, 237 (1969) (holding that a white owner has standing, under 42 U.S.C. §1982, to complain of discrimination against his assignee, who was black); *Jones v. Mayer*, 392 U.S. 409 (1968).

Similarly, nothing in the language of 42 U.S.C. §1982 supports the view of the Ninth Circuit.

**B. Decisions on Standing Are Consistent With Plaintiffs' Right to Sue.**

It is well recognized that each individual citizen is free to choose with whom he wishes to associate and that he has the legal right to protect that freedom, whether it be social, economic, educational, or in terms of his living environment. This Court and others have extended the protection of the law to blacks demanding relief in areas of education;<sup>20</sup> jury selection;<sup>21</sup> domestic relations;<sup>22</sup> employment;<sup>23</sup> discriminatory zoning;<sup>24</sup> and urban renewal projects.<sup>25</sup>

<sup>20</sup>*Lee v. Nyquist*, 318 F.Supp. 710 (W.D.N.Y. 1970) (3 judge court), aff'd 402 U.S. 935 (1971); *Brown v. Board of Education*, 347 U.S. 483 (1954); *Rogers v. Paul*, 382 U.S. 198 (1965).

<sup>21</sup>*Carter v. Greene County*, 396 U.S. 320 (1970).

<sup>22</sup>*Loving v. Virginia*, 388 U.S. 1 (1967).

<sup>23</sup>*Johnson v. Georgia Highway Express, Inc.*, 417 F.2d 1122 (5th Cir. 1969).

<sup>24</sup>*Kennedy Park Homes Association, Inc. v. City of Lackawanna*, 436 F.2d 108 (2d Cir. 1970), cert. denied, 401 U.S. 1010 (1971).

<sup>25</sup>*Shannon v. United States Department of Housing and Urban Development*, 436 F.2d 809 (3rd Cir. 1970).



Nor have the courts required that plaintiff be a member of the black race where the effect of permitting him standing would be to protect not only recognizable interests of the plaintiff but of the minority race as well. *Sullivan v. Little Hunting Park*, 396 U.S. 229, *supra*. In *Walker v. Pointer*, 304 F.Supp. 56 (N.D. Tex. 1969), the court held that white tenants evicted because they entertained black guests had standing under 42 U.S.C. §1982. Similarly, in *Barrows v. Jackson*, 346 U.S. 249 (1953), where a white woman was sued for breach of a racially restrictive covenant, this Court held that she had standing to challenge the illegality and raise the question of another's constitutional rights.

"Under the peculiar circumstances of this case, we believe the reasons which underlie our rule denying standing to raise another's rights, which is only a rule of practice, are outweighed by the need to protect the fundamental rights which would be denied by permitting the damages action to be maintained." (346 U.S. at 257).

The Court continued:

"Consistency in the application of rules of practice in this Court does not require us to put the State in such an unequivocal position *simply because the person against whom the injury is directed* is not before the Court to speak for himself. The law will permit respondent to resist any effort to compel her to observe such a covenant . . . *since she is the one in whose charge and keeping reposes the power to continue to use her property to discriminate* . . . The relation between the coercion exerted on respondent and her pos-

sible pecuniary loss thereby is so close to the purpose of the restrictive covenant, to violate the constitutional rights of those discriminated against, that *respondent is the only effective adversary of the unworthy covenant . . .* She will be permitted to protect herself and, by so doing, close the gap to the use of this covenant, so universally condemned by the courts." (346 U.S. at 259) (emphasis added).

The decision of the Ninth Circuit below adheres woodenly and without purpose to a rule of practice. It would disregard the plain fact that in cases such as the instant case it may well be that only persons such as the plaintiffs have the power to act in furtherance of the national goal of fair housing and would thus be the "only effective adversary" thereof.

Other decisions uphold the standing of mixed plaintiffs to complain of discriminatory acts even where they may not be the direct victims of the discrimination so long as they can allege injury. In *Shannon v. Hud*, 436 F.2d 809, *supra* note 25, the Court held that white and black persons, who are neither displaced residents nor potential occupants of an urban renewal project, have standing to challenge the project upon an allegation that the concentration of blacks in the project "will adversely affect not only their investments in homes and businesses but even the very quality of their daily lives." (436 F.2d at 818)<sup>26</sup>

<sup>26</sup>In *Hackett v. McGuire Brothers, Inc., et al.*, 445 F.2d 442 (3rd Cir. 1971), the court construed the standing issue broadly in favor of a black employee who had applied for and been granted pension benefits but sought nonetheless to enjoin and redress alleged violations of his equal opportunity rights during the period of his em-

The history of these decisions clearly indicates judicial recognition of standing in a civil rights context such as that in the instant case. And, this history lends clear support to the contention that the Fair Housing Act itself was intended to extend standing to persons such as the plaintiffs who pursue their own rights under that Act, as well as to the contention that they have standing under 42 U.S.C. §1982.

Furthermore, plaintiffs in the instant suit satisfy the two-fold test of standing generally announced by this Court. Standing exists, first where the plaintiff "alleges that the challenged action has caused him injury in fact, economic or otherwise," (*Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 152 (1970); *Sierra Club v. Morton*, \_\_\_\_\_ U.S. \_\_\_\_\_ [40 U.S.L.W. 4397] (1972)); and, second, where the interests of the plaintiff falls "within the zone of interests to be protected or regulated by the statute . . . in question." (*Data Processing Service v. Camp*, 397 U.S. at 153). The first test was unquestionably satisfied by plaintiffs in the instant case. This is as much as admitted by the Ninth Cir-

---

ployment. It interpreted language in Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5), ("a person claiming to be aggrieved"), very similar to that contained in 42 U.S.C. §3610, as showing a "congressional intention to define standing as broadly as is permitted by Article III of the Constitution." (*Id.* at 446). The court continues:

"The national public policy reflected both in Title VII . . . and in §1981 may not be frustrated by the development of overly technical judicial doctrines of standing or election of remedies. If the plaintiff is sufficiently aggrieved so that he claims enough injury in fact to present a genuine case or controversy in the Article III sense, then he should have standing to sue in his own right. . . ." (*Id.* at 446-47).

cuit (446 F.2d at 1162, n. 8). It seems equally clear that they satisfy the second test as well. In this regard, this Court noted, in *Data Processing Service v. Camp*, 397 U.S. at 154:

"Where statutes are concerned, the trend is toward enlargement of the class of people who may protest administrative action. The whole drive for enlarging the category of aggrieved 'persons' is symptomatic of that trend."

(See *Sierra Club v. Morton*, supra at 19 [40 U.S. L.W. at 4400]).

Coupling the broad Congressional policy of the Fair Housing Act of 1968, with the civil rights cases which clearly enlarge standing where necessary to achieve such policy (*Barrows v. Jackson*, supra), and the general rules of standing set forth by this Court in *Data Processing Service v. Camp* and *Sierra Club v. Morton*, supra, one can hardly escape the conclusion that the plaintiffs in this case must be accorded standing to redress a clear injury from which Congress intended that they be free. This result will have the cumulative and salutary effect of manifesting to minority groups that the courts will not permit the Act to lie idle and will thereby encourage its enforcement by those for whose immediate benefit it was intended.

## II.

**THE CLEAR CONGRESSIONAL POLICY OF PROVIDING FAIR HOUSING DICTATES THAT IT BE ACHIEVED THROUGH ENFORCEMENT OF REMEDIAL STATUTES EITHER BY THE ATTORNEY GENERAL OR BY PRIVATE PERSONS SUCH AS PLAINTIFFS.**

The opinion of the Ninth Circuit appears to restrict the correction of discriminatory patterns and practices of landlords to the Attorney General (446 F.2d at 1162, 1163). Yet, the Attorney General himself, recognizing the severity of this restriction in thwarting the congressional policy of fair housing, has forthrightly and clearly rejected it because it "threatens severely to hamper enforcement of the Act," since he has only a "limited staff for civil rights litigation."<sup>27</sup> Even assuming he had an adequate enforcement staff to handle cases involving a "pattern or practice" of resistance to the Act, what of the case of the landlord of a duplex or triplex who engages, not in a "pattern or practice", but discriminates only occasionally or once. The Attorney General assuredly would not have sufficient staff to prosecute; and the minority applicant is no less injured. Yet, for all of the reasons why such persons do not take advantage of their rights, not only will his grievances go unredressed, but the incumbent tenant, who may wish to assert his right to live in an integrated environment, may remain helpless if the opinion of the Ninth Circuit stands.

<sup>27</sup>Brief for the United States as Amicus Curiae, at 32-34, supra, note 17. The limited resources of the Attorney General to enforce civil rights litigation have previously led this Court to encourage private enforcement. *Allen v. State Board of Elections*, 393 U.S. 544, 556-57 (1969); *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 401 (1968).

In other appropriate instances, this Court has recognized the inadequacy of governmental prosecution or prospective injunctive relief. *Perma-Life Mufflers, Inc., et al., v. International Parts Corporation, et al.*, 392 U.S. 134 (1968). That case did not involve the issue of plaintiffs' standing; but it offers an interesting perspective on the issue in the instant case. The court held that nothing in the antitrust laws indicated a congressional intent that the doctrine of *in pari delicto* should constitute a defense to a private antitrust action. There, franchisees were required to accept certain unwanted franchise requirements at the risk of not getting a franchise otherwise attractive to them. This Court permitted them to maintain an action for treble damages, recognizing

"that the purposes of the anti-trust laws are best served by insuring that the private action will be an ever-present threat to deter anyone contemplating business behavior in violation of the anti-trust laws. The plaintiff who reaps the reward of treble damages may be no less morally reprehensible than the defendant, but the law encourages his suit to further the overriding public policy in favor of competition." (Id. at 139).

Thus, this Court protected the

"usefulness of the private action as a bulwark of anti-trust enforcement." (Id. at 139).

It would seem painfully ironic, indeed, if not unjust, for the law to permit a private plaintiff with unclean hands to obtain money damages in an effort to protect the sanctity of the antitrust laws, and, at the same

time, turn its head from private individuals who have suffered equal damage yet without any fault or wrongdoing of their own and who seek to protect a national policy of at least equal stature to the antitrust laws.

The experience of the Mid-Peninsula Citizens for Fair Housing in conducting its survey of discrimination in housing (*supra*, note 6) also suggests that it is only the educated minority applicant, such as a trained person, who is likely to see and understand that discrimination is being practiced. Any of the following means are used to reject blacks: no unit available to blacks; higher rent asked of blacks; later date set for occupancy by blacks; credit checks not required of whites; manager not home for blacks; more stringent lease requirements for blacks; refusal to put blacks on a waiting list, etc.<sup>28</sup> The Mid-Peninsula Citizens' experience also reveals that blacks will avoid looking for housing in certain areas rather than risk the humiliation of refusal. This has its clear effect on attempts to equalize employment opportunities for minorities. A breakthrough in this area may well be neutralized and have little meaning to a minority group member who may obtain employment in Palo Alto, or any other city, if he has to spend large sums of money to travel to work.<sup>29</sup> This is obviously a most

<sup>28</sup>Mid-Peninsula Citizens for Fair Housing, Summary of Apartment Discrimination in Palo Alto, California, 2, *supra*, note 6.

<sup>29</sup>The Mid-Peninsula Citizens for Fair Housing, Recommendations to the Palo Alto Human Relations Commission, 1972 (unpublished report available at the organization office, 460 California Avenue, Palo Alto, California 94306). At 2, it is stated:



unhealthy situation for any community to have to cope with. It behooves cities such as Palo Alto to take every form of action necessary to promote a healthy working as well as living environment for the benefit of the community as a whole, including members of minority groups. The Ninth Circuit itself has recognized the obligation of cities with respect to minorities:

"Surely, if the environmental benefits of land use planning are to be enjoyed by a city and the quality of life of its residents is accordingly to be improved, the poor cannot be excluded from enjoyment of the benefits. Given the recognized importance of equal opportunities in housing, it may well be, as a matter of law, that it is the responsibility of a city and its planning officials to see that the city's plan as initiated or as it develops accommodates the needs of its low income families, who usually—if not always—are members of minority groups." *Southern Alameda Spanish Speaking Organization v. City of Union City*, 424 F.2d 291, at 295-96 (1970) (dictum).<sup>30</sup>

---

"For local businesses to have meaningful affirmative action programs, the minority employees . . . must have adequate housing opportunities within the community."

(According to the Housing Element of the Palo Alto General Plan, at 1: "Unlike the common suburban city, Palo Alto has emerged as a sub-regional employment center offering jobs as well as housing.") The lack of adequate housing as an impairment to the infusion of minority groups into such employment centers on a county-wide basis is suggested by the SCC-JCCHP, The Joint Housing Element: 1971, *supra*, note 4, at 41:

"The disparity between the amounts of local employment and the distribution of work trips made by local residents suggest severe misfittings between economic opportunities and residential choice."

<sup>30</sup>See text note 19 *supra*.

Thus, cities in their governmental capacities, as well as minority groups themselves and tenants such as plaintiffs in the instant case, stand to benefit greatly by recognizing plaintiffs' right to stand alongside or in place of the Attorney General in enforcing the Fair Housing Act of 1968 and thereby fulfilling a wholesome national policy.

---

#### CONCLUSION

For the reasons stated above, we respectfully request that the decision of the Court below dismissing the complaint herein be reversed, and that the case be remanded to the District Court for expedited proceedings on the merits.

Dated, May 8, 1972.

Respectfully submitted,

ROBERT KEITH BOOTH, JR.,

Senior Assistant City Attorney,

PETER G. STONE,

City Attorney,

MARILYN D. NOREK,

Assistant City Attorney,

STEVEN D. McMORRIS,

Assistant City Attorney,

Attorneys for City of Palo Alto,

By ROBERT KEITH BOOTH, JR.,

FRED CAPLOE,

Special Counsel,

*Attorneys for Amicus Curiae.*



COP

# In the Supreme Court of the United States

OCTOBER TERM, 1972

Supreme Court, U. S.  
FILED

JUL 17 1972

MICHAEL RODAK, JR., CLERK

**No. 71-708**

PAUL J. TRAFFICANTE, DOROTHY M. CARR,  
COMMITTEE OF PARKMERCED RESIDENTS COMMITTED  
TO OPEN OCCUPANCY, an unincorporated association;  
THE REVEREND ARTHUR H. NEWBERG, JAMES EMBREE;  
ALBERT JAMES HEICK, and JAQUELINE TCHAKALIAN,  
*Petitioners,*

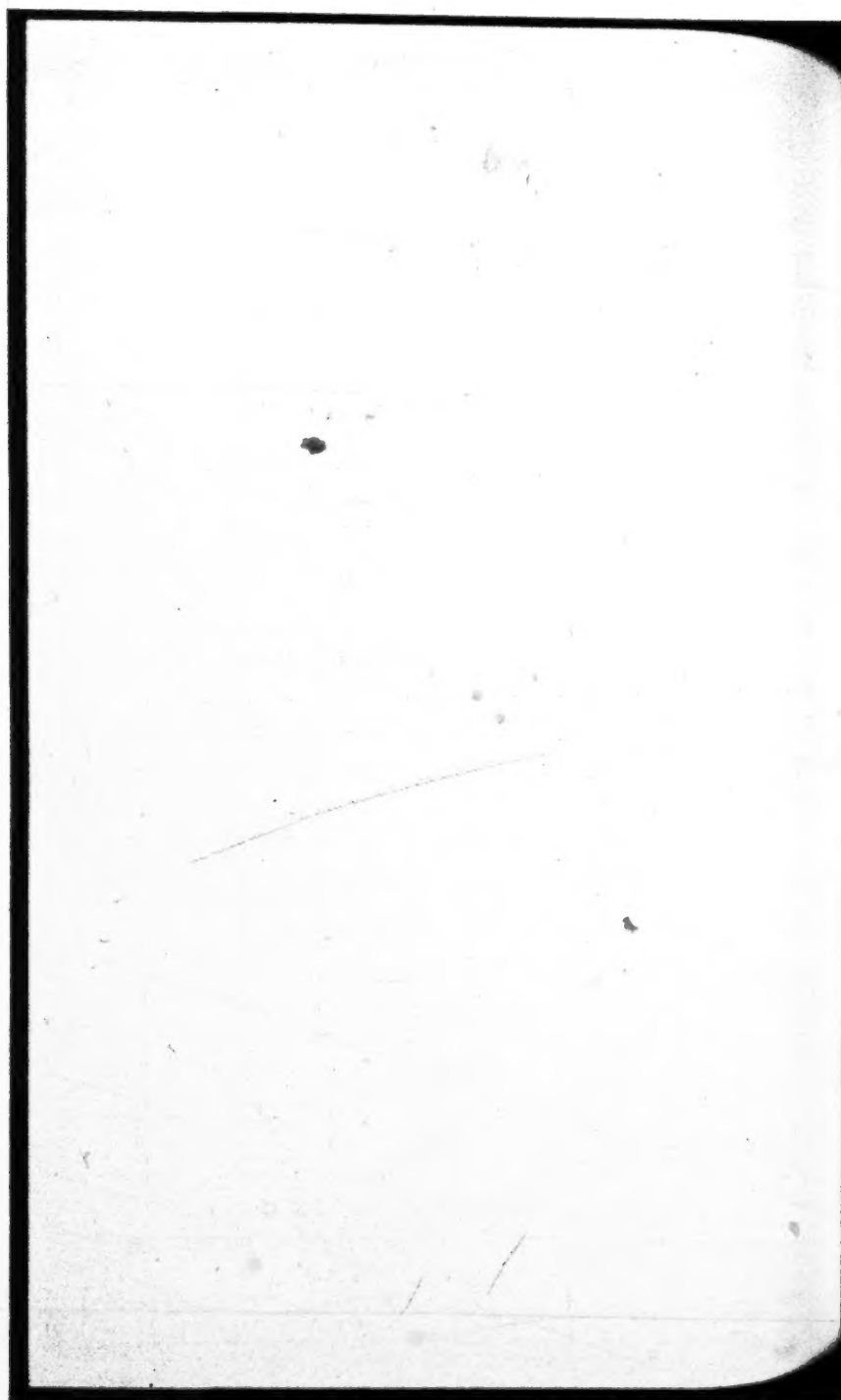
vs.

METROPOLITAN LIFE INSURANCE COMPANY,  
a New York Corporation, and PARKMERCED  
CORPORATION, a California Corporation,  
*Respondents.*

## Brief of Respondent Parkmerced Corporation on the Merits

THOS. B. DONOVAN  
ROBERT M. SHEA,  
KATE C. FREELAND,  
DINKELSPIEL, STEEFEL, LEVITT,  
WEISS & DONOVAN  
235 Montgomery Street, Suite 1910  
San Francisco, California 94104  
Telephone: (415) 391-3900

*Attorneys for Respondent  
Parkmerced Corporation*



## TABLE OF CONTENTS

	Page
Opinions Below .....	2
Jurisdiction .....	2
Statutes Involved .....	3
Questions Presented .....	3
Statement of the Case .....	3
1. Petitioners Do Not Represent Excluded Persons .....	4
2. The Complaints Are Based Upon Specific Allegations Of Discrimination Against Third Parties Unconnected With The Action .....	4
3. The Pendency Of A Companion Case .....	5
4. Parkmerced Corporation Had No Connection With Metropolitan's Operation Of Parkmerced During The Complaint Period And Has Assumed Full Control Of The Complex .....	6
Summary of Argument .....	8
I. Petitioners Lack Standing Under Title VIII ....	8
II. Petitioners Lack Standing Under 42 U.S.C. § 1982 .....	11
III. As An Alternative Ground Of Decision, The Action Should Be Dismissed Against Parkmerced Corporation Because It Did Not Participate In Any Of The Wrongs Complained Of ..	12
Argument .....	13
I. Tenants In A Privately Owned Apartment Complex Do Not Have Standing To Maintain An Action Challenging Alleged Discriminatory Housing Practices Directed Against Others ....	13

A.	Title VIII Creates Specifically Defined Rights Of Action In Persons Discriminated Against, But Not The General Right To Maintain Suit Claimed By Petitioners..	15
1.	The Language Of Title VIII .....	15
2.	Legislative History Of Title VIII Does Not Support Petitioners' Standing To Sue .....	18
B.	The Suggestion Of The Assistant Regional Administrator Of HUD That Petitioners Have Standing Under Title VIII Is Not Entitled To Weight .....	21
C.	Denial Of Standing To Petitioners Herein Will Not Impair The Effective Realization Of Rights Secured By Title VIII .....	23
1.	Title VIII Provides Material Incentives To Suit, And Persons Claiming They Were Discriminated Against Have In Fact Brought Suit .....	23
2.	The Role Of Private Citizens To Proceed As "Private Attorneys General" Will Not Be Affected .....	24
3.	Denial Of Standing To These Petitioners Will Not Frustrate Or Impair Attacks Upon "Patterns Or Practices" Of Discrimination .....	25
D.	The Legal Authorities Cited By Petitioners Do Not Support Their Standing To Maintain A Private Suit Under Title VIII To Litigate The Rights Of Absent Third Parties .....	26
1.	Cases Involving A Citizen's Challenge To Governmental Agency Action .....	27



# TABLE OF CONTENTS

iii

## Pages

2. Cases In Which The Plaintiffs Have Suffered Direct Personal Injury Cognizable Under The Relevant Statute ....	30
3. Cases In Which Plaintiffs Are Permitted To Assert The Rights Of Absent Third Parties Who Are Otherwise Denied A Forum .....	32
4. Cases Arising In The Areas Of Public Accommodations And Labor Relations Under Statutory Schemes Unlike Title VIII .....	34
II. Standing To Maintain Suit Under 42 U.S.C. § 1982 Is Limited To Those Directly Injured By The Claimed Violation .....	36
III. Dismissal Of The Complaints Against Parkmerced Corporation Should Be Affirmed On The Additional Ground That Parkmerced Corporation Did Not Participate In The Alleged Violations And Cannot Be Compelled To Litigate, Or Be Held Liable For, Alleged Misconduct Of Metropolitan .....	38
A. Parkmerced Corporation Was Unconnected With Metropolitan's Conduct, And Has Assumed Full Operational Control Independent Of Metropolitan .....	39,
B. Title VIII and 42 U.S.C. § 1982 Should Not Be Applied To Burden Purchasers Unconnected With The Alleged Discriminatory Conduct .....	40
Conclusion .....	45

## APPENDICES

Appendix A—Opinion Of The Federal District Court For The Northern District Of California, Dated February 10, 1971, Dismissing The Complaints In *Trafficante, et al. v. Metropolitan Life Ins. Co., et al.* (N.D. Cal. No. C-70-1754) .....App. 1

Appendix B—Decision Of The Court Of Appeals For The Ninth Circuit, Filed September 13, 1971, Denying Rehearing In *Trafficante, et al. v. Metropolitan Life Ins. Co., et al.* (9th Cir. No. 71-1325) ..App. 4

Appendix C—Relevant Statutes

- C-1. Fair Housing Act of 1968, 42 U.S.C. §§ 3601-3619 .....App. 5
- C-2. Civil Rights Act of 1866, 42 U.S.C. § 1982 .....App. 23

Appendix D—Complaint For Violation Of Fair Housing Laws, *Burbridge, et al. v. Parkmerced Corp., et al.* (N.D. Cal. No. C-71-378 [AJZ] .....App. 24

## TABLE OF AUTHORITIES

CASES	Pages
Adickes v. S. H. Kress & Co., 398 U.S. 144 (1970) .....	31, 35
Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc., 391 U.S. 308 (1968) .....	30
Arnold Tours, Inc. v. Camp, 400 U.S. 45 (1970) .....	28
Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150 (1970) .....	14, 27, 28, 29
Bailey v. Patterson, 369 U.S. 31 (1962) .....	21, 34
Baker v. Carr, 369 U.S. 186 (1962) .....	14
Barlow v. Collins, 397 U.S. 159 (1970) .....	27, 29
Barrows v. Jackson, 346 U.S. 249 (1953) .....	31, 32, 33
Bowe v. Colgate Palmolive Co., 416 F.2d 711 (7th Cir. 1969) .....	25
Brown v. Board of Education, 347 U.S. 483 (1954) .....	27
Browns v. Mitchell, 409 F.2d 593 (10th Cir. 1969) .....	30
Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961) .....	30
Carr v. Conoco Plastics, Inc., 432 F.2d 57 (5th Cir.) cert. den., 400 U.S. 951 (1970) .....	35
Carter v. Greene County, 396 U.S. 320 (1970) .....	27
Connecticut Action Now, Inc. v. Roberts Plating, Co., Inc., 457 F.2d 81 (1972) .....	29
Eisenstadt v. Baird, ..... U.S. ...., 92 S.Ct. 1029 (1972) .....	11, 23, 32, 33, 34
Environmental Defense Fund, Inc. v. Hardin, 428 F.2d 1093 (D.C. Cir. 1970) .....	27
Flast v. Cohen, 392 U.S. 83 (1968) .....	13, 27
Griswold v. Connecticut, 381 U.S. 479 (1965) .....	33
Harris v. Jones, 296 F. Supp. 1082 (D. Mass. 1969) ....	37
Hobson v. Hansen, 320 F. Supp. 409, 720 (D.D.C. 1970)	27
Hutchings v. United States Industries, Inc., 428 F.2d 303 (5th Cir. 1970) .....	25

	Pages
Investment Company Institute v. Camp, 401 U.S. 617 (1971) .....	28
Jenkins v. United Gas Corp., 400 F.2d 28 (5th Cir. 1968) .....	25
John Wiley & Sons, Inc. v. Livingston, 376 U.S. 543 (1964) .....	36, 43
Jones v. Mayer Co., 392 U.S. 409 (1968) .....	37
Kennedy Park Homes Association, Inc. v. City of Lackawanna, 436 F.2d 108 (2d Cir. 1970), <i>cert. den.</i> , 401 U.S. 1010 (1971) .....	27
Lee v. Macon County Board of Education, 267 F.Supp. 458 (M.D. Ala.), <i>aff'd. per curiam</i> , 389 U.S. 215 (1967) .....	27
Lloyd Corp., Ltd. v. Tanner, ..... U.S. .... [40 U.S. L.W. 4829] (June 22, 1972) .....	30
Madlock v. Sardis Luggage Co., 302 F.Supp. 866 (N.D. Miss. 1969) .....	25
Marable v. Alabama Mental Health Board, 297 F. Supp. 291 (M.D. Ala. 1969) .....	27
Marsh v. Alabama, 326 U.S. 501 (1946) .....	30
Meyer v. Massachusetts Eye and Ear Infirmary, 330 F. Supp. 1328 (D.Mass. 1971) .....	34
N.L.R.B. v. Birdsall-Stockdale Motor Co., 208 F.2d 234 (10th Cir. 1953) .....	43
N.L.R.B. v. Deena Artware, Inc., 361 U.S. 398 (1960)	43
N.L.R.B. v. Tanner Motor Livery, Ltd., 349 F.2d 1 (9th Cir. 1965) .....	35
Nesmith v. Alford, 318 F.2d 110 (5th Cir. 1963) .....	35
New Negro Alliance v. Sanitary Grocery Co., 303 U.S. 552 (1938) .....	35
Offner v. Shell's City, Inc., 376 F.2d 574 (5th Cir. 1967) .....	31, 35

## TABLE OF AUTHORITIES

vii

	Pages
Regal Knitwear Co. v. N.L.R.B., 324 U.S. 9 (1945) ....	42
Rogers v. E.E.O.C., 454 F.2d 234 (5th Cir. 1971) .....	35
Rogers v. Paul, 382 U.S. 198 (1965) .....	27
S.E.C. v. Barraco, 438 F.2d 97 (10th Cir. 1971) .....	42
Sanchez v. Standard Brands, Inc., 431 F.2d 445 (5th Cir. 1970) .....	25
Scenic Hudson Preservation Conf. v. F.P.C., 354 F.2d 608 (2d Cir. 1965), <i>cert. den.</i> , 384 U.S. 941 (1966) 27, 28, 29	
Shannon v. HUD, 436 F.2d 809 (3rd Cir. 1970) .....	27
Shelley v. Kraemer, 334 U.S. 1 (1947) .....	31
Sierra Club v. Morton, ..... U.S. ...., 92 S.Ct. 1361 (1972) .....	10, 14, 27, 28, 31, 32
Sisters of Providence of St. Mary of the Woods v. City of Evanston, 335 F.Supp. 396 (N.D. Ill. 1971) .....	27
Skidmore v. Swift, 323 U.S. 134 (1944) .....	22
Solien v. Misc. Drivers & Helpers Union, Local No. 610, 440 F.2d 124 (8th Cir.), <i>cert. den.</i> 403 U.S. 905 (1971) .....	29, 30
Sullivan v. Little Hunting Park, 396 U.S. 229 (1969) ....	31, 37
Tileston v. Ullman, 318 U.S. 44 (1943) .....	33
Tolg v. Grimes, 335 F.2d 92 (5th Cir.), <i>cert. den.</i> , 384 U.S. 988 (1966) .....	31, 35
Trafficante, et al. v. Metropolitan Life Insurance Co., et al., 332 F. Supp. 352 (N.D. Cal.), <i>aff'd</i> , 446 F.2d 1158 (9th Cir. 1971) .....	2, 7
United Church of Christ v. F.C.C., 359 F.2d 994 (D.C. Cir. 1966) .....	28
United Pharmacal Corp. v. U.S., 306 F.2d 515 (1st Cir. 1962) .....	42, 43
United States v. Bob Lawrence Realty, Inc., 313 F. Supp. 850 (N.D. Ga. 1970) .....	26
United States v. Johns-Manville Corp., 245 F. Supp. 74 (E.D. Pa. 1965) .....	41, 42

	Pages
United States v. Mintzes, 304 F. Supp. 1305 (D. Md. 1969) .....	26
United States Pipe & Foundry Co. v. N.L.R.B., 398 F.2d 544 (5th Cir. 1968) .....	43
United States v. West Peachtree Tenth Corp., 437 F.2d 221 (5th Cir. 1971) .....	16, 26
United Steel Workers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960) .....	36
Valle v. Stengel, 176 F.2d 697 (3rd Cir. 1949) .....	31
Walker v. Pointer, 304 F.Supp. 56 (N.D. Tex. 1969) ....	31, 37
Wheeler v. Durham City Board of Education, 363 F.2d 738 (4th Cir. 1966) .....	27
Younger v. Harris, 401 U.S. 37 (1971) .....	33, 34

#### CONSTITUTION, STATUTES AND RULES

U.S. Constitution, Art. III .....	8, 13, 28
29 U.S.C. §§ 104, 107, 113, 157 .....	35
42 U.S.C.:	
§ 1982 .....	1, 3, 6, 11, 12, 36, 37, 39, 40, 41, 43
§ 1983 .....	35
§ 2000a .....	21
§ 2000a(a) .....	34
§ 2000(e) .....	36
§ 3601 <i>et seq.</i> (Title VIII) .....	1, 3, 4, 8-12, 14-18, 20, 21, 23-26, 34-37, 39, 41, 45
§ 3601 .....	15
§ 3602 .....	9, 15, 23
§ 3603 .....	9, 15
§ 3604 .....	4, 9, 15, 17, 19
§ 3605 .....	9, 15
§ 3606 .....	9, 15

# TABLE OF AUTHORITIES

ix

## Pages

§ 3610 .....	5, 9, 14, 15, 16, 18, 19, 26
§ 3612 .....	5, 9, 11, 14, 16, 18, 20, 26
§ 3613 .....	9, 16, 18, 25, 26, 29

## F.R.Civ.P.:

Rule 12 .....	38
Rule 23 .....	6
Rule 25 .....	38, 44, 45
Rule 65 .....	42

## LEGISLATIVE HISTORY OF TITLE VIII

### 114 Cong. Rec. (1968):

293 .....	19
2273 .....	20
2706 .....	19
3247 .....	19
4568 .....	21
9603-04 .....	20

## OTHER AUTHORITIES

<i>Moore's Federal Practice</i> (2d ed. 1969) .....	45
Annotation, 97 A.L.R. 2d 490 .....	43
Complaint in <i>Burbridge, et al. v. Parkmerced Corporation, et al.</i> (N.D. Cal. No. C-71-378) .....	5, 11, 24, 32



sented in the action. The Court of Appeals for the Ninth Circuit affirmed dismissal of the complaints herein on the ground that petitioners lacked standing to proceed because they did not allege acts of discrimination against themselves and we ask this Court to affirm.

In addition, Parkmerced Corporation purchased and assumed full control of the Parkmerced complex several months after the date of the complaint. Parkmerced Corporation had no connection with the prior owner, respondent Metropolitan Life Insurance Company. We contend that, if the plaintiffs are granted standing, the action nonetheless must be dismissed against Parkmerced Corporation because it did not participate in or contribute to any of the wrongs complained of in the complaint. This issue was not decided by either court below because these courts found petitioners lack standing.

### **OPINIONS BELOW**

The opinion of the Federal District Court for the Northern District of California dismissing the complaints is reported at 322 F. Supp. 352 (N.D. Cal. 1971) and is set forth as Appendix A hereto. (App. 1-3) The opinion of the Court of Appeals for the Ninth Circuit affirming dismissal is reported at 446 F.2d 1158 (9th Cir. 1971), and is set forth as Appendix A to Petitioners' Brief on the merits, filed herein on or about May 4, 1972.<sup>2</sup> The Court of Appeals denied rehearing on September 13, 1971. (App. 4)

### **JURISDICTION**

See Petitioners' Brief, page 3.

---

2. Petitioners' Brief is hereafter cited as "Pet. Br., p. ....".

### STATUTES INVOLVED

The statutes involved are Title VIII (Fair Housing) of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 *et seq.*) and 42 U.S.C. § 1982, the full texts of which are set forth in App. 5-23.

### QUESTIONS PRESENTED

I. Whether tenants in a privately owned and operated apartment-complex have standing to maintain an action against their landlord under Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601, *et seq.*) or 42 U.S.C. § 1982 upon allegations that the landlord engaged in discriminatory housing practices against third parties who are neither joined nor represented in the action and will not be bound or affected thereby?

II. As an alternative ground of decision, whether an independent purchaser of an apartment complex which had no connection with alleged housing discriminations by the seller can be compelled to bear the risks and burdens of litigation of alleged discrimination by the seller, or be subjected to affirmative relief therefor, solely because the purchaser had notice that claims of such discrimination had been made prior to the sale?

### STATEMENT OF THE CASE

Since the questions before this Court are whether the petitioners (plaintiffs below) have alleged sufficient facts to show that they have standing to maintain this action, and if so, whether they have stated a cause of action against Parkmerced Corporation, the relevant facts are those in the pleadings. The briefs of other parties provide summaries of the complaints and prior proceedings below, which will not be restated here. However, we wish to call certain facts to the Court's attention.

**1. Petitioners Do Not Represent Excluded Persons**

Each of the individual petitioners herein (and each member of the petitioner Committee) was at the time of these complaints a resident of Parkmerced. None of the complaints purports to state a class or representative action on behalf of those allegedly excluded from Parkmerced by the discriminatory housing practices complained of.

**2. The Complaints Are Based Upon Specific Allegations Of Discrimination Against Third Parties Unconnected With The Action**

These proceedings were initiated by petitioners Trafficante and Carr by identical "Housing Discrimination Complaints" filed May 14, 1970, with the United States Department of Housing and Urban Development ("HUD"). Each such administrative complaint recites the facts comprising the violation complained of as follows:

"I have been injured by discriminatory housing practices against minority group applicants and potential applicants under § 804(a), (b) and (d) of Title VIII of the 1968 Civil Rights Act." (Pet. Br., exhibits annexed to App. C).

Each complaint asserts that such violations occurred "At all times during the past 180 days". (Ibid.)

These sections of Title VIII declare it unlawful to refuse to rent to any person or to make available a dwelling on the ground of race, color, religion or national origin; to discriminate against any person in terms or conditions of rental on such ground; and to misrepresent to any person a dwelling's availability for inspection or rental on such ground. Title VIII is set out in full at App. 5-22.

Petitioners Trafficante and Carr thereafter filed a civil complaint in the District Court under 42 U.S.C. § 3610(d)<sup>3</sup> based upon the same factual allegations as the administrative complaints, copies of which were annexed to the pleading.<sup>4</sup> (Pet. Br., App. C and exhibits thereto). The complaint in intervention thereafter filed by other petitioners is also based upon these same facts. It is in *haec verba* to the Trafficante and Carr complaint and, as petitioners state, is "... identical in all material respects ...", except that the intervening plaintiffs did not proceed by administrative complaint under 42 U.S.C. § 3610 (Pet. Br., p. 4, fn. 2).

## 2. The Pendency Of A Companion Case

Within two weeks after the entry of judgment by the District Court dismissing the complaints, and immediately after petitioners filed their notice of appeal to the Court of Appeals, petitioners' attorneys, again acting on behalf of the San Francisco Lawyers Committee for Urban Affairs, filed a separate action in the same District Court, against the same defendants, claiming virtually identical housing discriminations (*Burbridge, et al. v. Parkmerced Corporation, et al.*, (N.D. Cal. No. C-71-378) filed February 25, 1971; a copy of this complaint is annexed as App. 24-33). The charging portions of the complaint in *Burbridge* are substantially the same as those in the case at bar, with the

3. 42 U.S.C. § 3610(d) provides that, if HUD shall not resolve the administrative complaint within a specified time, the complainant may bring a civil action to "... enforce the rights granted or protected by [Title VIII], insofar as such rights relate to the subject of the complaint [to HUD] ..."

4. The civil complaint also purports to state causes of action under 42 U.S.C. § 3612 and 42 U.S.C. § 1982 based, however, upon the same factual allegations as the claim under § 3610(d) (Pet. Br., App. C at p. 6).

exception of immaterial additions reflecting Parkmerced Corporation's purchase of the properties.<sup>5</sup>

*Burbridge* differs from the case at bar in two vital respects. First, the plaintiffs in *Burbridge* allege that they personally were denied the opportunity to rent or make application to rent dwellings at Parkmerced and, second, the *Burbridge* plaintiffs bring their action as a class action under F.R.Civ.P. 23 purportedly on behalf of and binding upon all members of minority groups against whom the respondents allegedly have discriminated. Metropolitan and Parkmerced Corporation have answered the *Burbridge* complaint without challenging the standing of those plaintiffs to maintain suit. The propriety of class representation has not yet been judicially determined.

**4. Parkmerced Corporation Had No Connection With Metropolitan's Operation Of Parkmerced During The Complaint Period And Has Assumed Full Control Of The Complex**

On December 21, 1970, more than seven months after the initial complaint to HUD (and two months after the last complaint in intervention), Metropolitan sold its interest in the Parkmerced complex to Parkmerced Corporation, a California corporation recently formed for the purpose of acquiring the complex. The transaction took the form of an outright sale of buildings, structures and improvements, including tenant leases, and a thirty-year lease of the underlying ground, with options in Parkmerced Corporation to renew the ground lease for three additional fifteen-year terms. Metropolitan granted a purchase money

---

5. The *Burbridge* complaint recites that, prior to the purchase, Parkmerced Corporation "... had knowledge of the allegations of racial discrimination contained hereby [sic] by virtue of their familiarity with the case of *Trafficante, et al. v. Metropolitan Life Insurance Company* (No. C-70-1754 [RHS] ... ." (App. D, para. 10 at App. 28).

mortgage for a portion of the purchase price and obtained a security interest in improvements, personal property and lease revenues (Kilmartin Affidavit, R. Ex. K.).<sup>6</sup> Copies of the contract of sale, lease, mortgage and various letter agreements were filed as exhibits in the trial court. By the terms of these agreements, ownership of Parkmerced and control of its leasing and operating policies passed entirely to Parkmerced Corporation and Metropolitan has retained no interest in or control of operational policies.<sup>7</sup>

On January 5, 1971, two weeks after the Parkmerced sale, petitioners amended their complaints to state their cause of action against Parkmerced Corporation. Petitioners demand that Parkmerced Corporation provide broad affirmative relief to remedy the alleged unlawful racial imbalance at Parkmerced and otherwise to correct the effects of discriminations allegedly practiced by Metropolitan (Pet. Br., App. C at p. 7 and App. D at p. 3). The sole bases stated for imposing such a burden upon Parkmerced Corporation are: (i) that prior to the purchase, Parkmerced Corporation knew of this litigation; (ii) the assertion, upon information and belief, that in its first two weeks of ownership Parkmerced Corporation did not make

6. The reference "R.Ex. ...." refers to exhibits contained in the certified record herein.

7. Petitioners' amended complaints contain the unsupported and erroneous assertion that these companies "... made certain further agreements contemplating concerted future actions by them with respect to the operation and ownership of Parkmerced." (Pet. Br., App. D. at para. 1(d)). The lease and mortgage contain normal provisions for the protection of Metropolitan's mortgage and ground lease interests. Side agreements provide for additional financing from Metropolitan of certain capital improvements and for adjustment of debt and ground lease relationships upon the possible future transfer of ownership of all or a part of the premises by Parkmerced Corporation. The sole provision which might affect Parkmerced Corporation's independent operational control is a provision of the ground lease that Metropolitan, for "cause", can require Parkmerced Corporation to select and appoint an independent property manager.



substantial changes in business operations or policies at Parkmerced; and (iii) the assertion, also upon information and belief, that Parkmerced Corporation intends to retain Metropolitan's employees at the project and does not intend to make substantial changes in operations or policies.<sup>8</sup>

### SUMMARY OF ARGUMENT

#### I. Petitioners Lack Standing Under Title VIII

Petitioners lack standing because they are not appropriate persons to litigate the claimed denial of rights to third persons who they allege were excluded from the Parkmerced complex in violation of Title VIII (42 U.S.C. §§ 3601 *et seq.*). The doctrine of standing has developed from the limitation in Article III of the Constitution of the judicial power to "Cases" and "Controversies" and requires that the party present a genuine dispute, adversary in nature, and that the party be in a position to adequately present and finally determine the controversy. Plaintiffs lack standing here because Title VIII does not create a private right of action in persons who are not themselves the objects of discriminatory housing practices directly and personally injured thereby and because petitioners are not persons appropriate to assert the rights of absent third parties. Litigation of the wrongful exclusion of others by these petitioners would be inconclusive, in that the persons whose rights are at issue are neither present nor represented in the action and would not be bound or affected thereby.

---

8. The amended complaints state that this last assertion is made "[o]n the basis of . . ." two letters, dated the date of the sale, directed to residents of Parkmerced for the purpose of informing them of the change of ownership and that their tenancies would not be affected. (Pet. Br., App. D, para. 4 at p. 3; the letters are annexed as exhibits to Pet. Br., App. D) The letters cannot be read as an admission that Parkmerced Corporation intended to undertake or continue a scheme of discrimination.



Title VIII proscribes "discriminatory housing practices" which are specifically defined in the Act.<sup>9</sup> Title VIII applies to a broad range of real estate transactions including the sale, lease or financing of a private dwelling.<sup>10</sup> The complaints allege violations of 42 U.S.C. §§ 3604(a), (b) and (d) which, as here pertinent, declare it unlawful to refuse to rent or to make unavailable a dwelling to any person who makes a *bona fide* offer on the ground of race, color, religion or national origin; to discriminate against any person in the terms, conditions or privileges of rental on such grounds; and to misrepresent the availability of a dwelling to any person on such grounds. The "person aggrieved" by such a discriminatory housing practice may complain to HUD which will attempt to resolve the dispute by conciliation.<sup>11</sup> The aggrieved person may file a civil action to enforce his rights if conciliation by HUD is ineffective<sup>12</sup> or may bring a civil action without prior complaint to HUD.<sup>13</sup> In either case, the initial complaint must be made within 180 days after the alleged violation occurred.<sup>14</sup> Title VIII also provides that the Attorney General may bring a suit, without reference to a specific period of limitations, to attack a "pattern or practice" of resistance to the rights granted by the Act, or the denial of such rights to a group of persons which raises an issue of "general public importance."<sup>15</sup>

These provisions, which proscribe specifically defined acts of discrimination against persons who seek to buy, rent

9. 42 U.S.C. §§ 3602(f), 3604-06.

10. 42 U.S.C. § 3603.

11. 42 U.S.C. § 3610.

12. 42 U.S.C. § 3610(d).

13. 42 U.S.C. § 3612.

14. 42 U.S.C. §§ 3610, 3612.

15. 42 U.S.C. § 3613.

or finance housing, and which limit the right of complaint or suit to a short limitations period, are inconsistent with the creation of a generalized public right to sue to create an integrated environment which petitioners demand. The "pattern or practice" provisions cannot be construed to create a private right of action. While the legislative history of Title VIII does not deal directly with the question of standing, the comments of sponsors and other legislators are most consistent with a Congressional intent to create only specific personal rights of action in persons who claim that they were discriminated against.

While in recent years the law of standing has been liberalized in connection with attempts by private citizens to secure review of governmental agency action, such cases do not require that private litigants in the position of petitioners be granted standing to maintain suit against other private persons. The policy considerations which support a citizen's standing to challenge the regularity and correctness of government action are irrelevant here and, in any event, this Court continues to require a showing of direct personal injury flowing from the challenged conduct, which petitioners here have not shown. *Sierra Club v. Morton*, ..... U.S. ...., 92 S.Ct. 1361 (1972). Other authorities relied upon by plaintiffs arise under the labor and employment laws or public accommodations laws which differ materially from Title VIII. In almost all cases, the persons bringing suit allege that they themselves have been directly and personally injured by the defendant's conduct placed at issue.

Petitioners in effect seek to assert the rights of third persons, those who allegedly were excluded from Parkmerced. Petitioners bear no particular or special relationship to the persons whom they purport to represent and such persons are not disqualified from suit nor denied a forum to assert

their rights. Contrast *Eisenstadt v. Baird*, ..... U.S. ...., 92 S.Ct. 1029 (1972). To the contrary, persons allegedly excluded from Parkmerced have in fact brought a companion case to that at bar in the form of a class action purporting to represent all those excluded on grounds of race or color (*Burbridge, et al., v. Parkmerced Corp., et al.*, discussed at pp. 5-6, *supra*.)

Title VIII provides that a successful plaintiff may be awarded costs, attorneys' fees and up to \$1,000 punitive damages.<sup>16</sup> There should be no concern, that if petitioners' standing is denied, proper plaintiffs to secure the rights granted by Title VIII will not emerge.

## **II. Petitioners Lack Standing Under 42 U.S.C. § 1982**

This Section was enacted in 1866 and is broad and declaratory in terms:

"Section 1982. *Property rights of citizens.* All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property." (42 U.S.C. § 1982)

Standing to sue under this statute has been accorded to persons who have been directly injured by the deprivation of their property rights, but has never been construed to provide a right of action in persons whose rights have not been so deprived. The reasons for the denial of petitioners' standing under Title VIII are equally applicable to 42 U.S.C. § 1982, in that the petitioners seek to litigate the claims of absent third parties and the litigation would be inconclusive and ineffective to bind the persons whose rights are at issue.

16. 42 U.S.C. § 3612(c).

**III. As An Alternative Ground Of Decision, The Action Should Be Dismissed Against Parkmerced Corporation Because It Did Not Participate In Any Of The Wrongs Complained Of**

Parkmerced Corporation purchased the Parkmerced complex from Metropolitan many months after the transactions complained of in the complaint. Parkmerced Corporation had no connection with Metropolitan's conduct of the premises and it has assumed independent control of rental policies at Parkmerced. Petitioners claim that Parkmerced Corporation should be required to litigate the merits of their claims and be subject to affirmative relief to remedy alleged racial imbalances at Parkmerced and to cure the effects of alleged past discriminations. The basis for subjecting Parkmerced Corporation to the burden and risks of litigation and to affirmative relief is that Parkmerced Corporation had notice of petitioners' complaints herein.<sup>17</sup>

It is both improper and unfair to hold Parkmerced Corporation as a party or subject it to relief. Title VIII and 42 U.S.C. § 1982 proscribe specific discriminatory conduct, none of which is attributed to Parkmerced Corporation by the complaints. Neither Title VIII nor 42 U.S.C. § 1982 purports to impose a kind or degree of racial or other integration which must exist at an apartment complex. Parkmerced Corporation should remain free to operate Parkmerced as it desires, so long as it does not itself engage in discriminatory housing practices.

The fact that Parkmerced Corporation had notice of the charges is of no moment. Metropolitan has denied the charges. While Parkmerced has obtained indemnification against the costs of suit, there is no practical means by which it through agreement with Metropolitan could insulate itself from the adverse consequences of the dislocations

---

17. Other bases adverted to in the complaint are patently without substance (see pp. 6-8, *supra*).

of its affairs and disparaging publicity which will arise from its joinder in the suit or from the adverse consequences of the broad affirmative relief which petitioners demand. A rule subjecting innocent purchasers to such liabilities because they had notice of unadjudicated claims would provide claimants an opportunity to hamper severely or frustrate real estate transactions by the filing of claims, whether made in good faith or not. These results are unwarranted and not required by either statute.

### ARGUMENT

#### **I. Tenants In A Privately Owned Apartment Complex Do Not Have Standing To Maintain An Action Challenging Alleged Discriminatory Housing Practices Directed Against Others**

The doctrine of standing has developed as a rule of judicial discretion and restraint to limit the range and kinds of persons entitled to require courts to adjudicate issues raised by a complaint. The doctrine has its origin in the limitation of the judicial power to "Cases" and "Controversies" in Article III of the Constitution and in its essence requires that the dispute be genuine, that the proceeding be adversary in its nature and that the party claiming standing be in a position to represent adequately and determine authoritatively the rights and interests to be decided in the case. *Flast v. Cohen*, 392 U.S. 83, 94-106 (1968). As this Court stated in *Flast v. Cohen*:

"Thus, in terms of Article III limitations on federal court jurisdiction, the question of standing is related only to whether the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution. It is for the reason that the emphasis in standing problems is on whether the party invoking federal court jurisdiction has 'a personal stake in the outcome of the controversy,' *Baker v. Carr*, *supra*, 369 U.S. at 204, 82

S.Ct. at 703, and whether the dispute touches upon 'the legal relations of parties having adverse legal interests.' *Aetna Life Insurance Co. v. Haworth*, *supra*, 300 U.S. at 240-241, 57 S.Ct. at 464." (392 U.S. at p. 101).

Standing requires that, at the outset of a case, the plaintiff demonstrate that it has a direct, personal interest in resolution of the issues to be adjudicated and that the plaintiff be in a position to present the relevant issues with "... that concrete adverseness which sharpens the presentations of issues upon which the court so largely depends for illumination of difficult . . . questions", *Baker v. Carr*, 369 U.S. 186, 204 (1962); Cf. *Sierra Club v. Morton*, .... U.S. ...., 92 S.Ct 1361 (1972); *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150 (1970).

By their complaints, petitioners seek to litigate the question whether third parties were wrongfully excluded from Parkmerced. Petitioners cannot be granted standing under Title VIII because they do not have a direct, personal stake in the outcome of the issues to be tried, they do not present claims having the required concrete adverseness and the litigation by them would be inconclusive and ineffectual to bind or affect the persons whose rights are claimed to have been denied.

The question here, narrowly stated, is whether the petitioners are "persons aggrieved" within the intendment of 42 U.S.C. §§ 3610(a) and 3612, which confer upon those "aggrieved" a right of action. A mere claim of injury, indignation or loss does not, without more, suffice to demonstrate standing. This Court must analyze the substantive rights created by Title VIII, the violations claimed in the complaints, and the nature of the issues made relevant and to be resolved in order to determine whether petitioners are appropriate plaintiffs to advocate the same. We submit that petitioners are not.



**TITLE VIII CREATES SPECIFICALLY DEFINED RIGHTS OF ACTION IN PERSONS DISCRIMINATED AGAINST, BUT NOT THE GENERAL RIGHT TO MAINTAIN SUIT CLAIMED BY PETITIONERS**

Petitioners argue that this Court should allow standing to the broadest range of potential plaintiffs because Title VIII expresses a policy of "fair housing throughout the United States" (42 U.S.C. § 3601; Pet. Br., pp. 15-18). However, such a general statement cannot answer the question whether Congress intended to enforce that policy by entitling tenants in a privately owned apartment complex to maintain judicial proceedings upon supposed acts of discrimination against third parties. Neither the language of the Act nor the legislative history supports such a conclusion.

**1. The Language Of Title VIII**

Title VIII is specific and exact as to the acts and practices, defined as "discriminatory housing practices", declared unlawful (42 U.S.C. § 3602(f)). The practices declared unlawful are discrimination against any person in the sale or rental of housing, in the financing of housing and in the provision of real estate brokerage services (42 U.S.C. §§ 3604-06). With certain exceptions not here relevant, Title VIII is made applicable to a wide range of real estate transactions, including the sale or rental of a single family house through a broker or agent (42 U.S.C. § 3603).

A "person aggrieved",<sup>18</sup> may complain to the Secretary of HUD. The Secretary is required, in certain cases, to refer the complaint to appropriate local agencies, and is empowered to attempt to resolve the complaint by "... in-

18. Defined as "[a]ny person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur..." (42 U.S.C. § 3610(a)).



formal methods of conference, conciliation, and persuasion" (42 U.S.C. §§ 3610(a), (c)). If within thirty days after the complaint is filed with the Secretary, or after the expiration of a period of reference to local authorities, the Secretary has been unable to obtain voluntary compliance, the person aggrieved may commence an action in the Federal District Court (42 U.S.C. § 3610(d)). A complaint under 42 U.S.C. § 3610(a) must be "verified" and is required to be filed within 180 days after the alleged discriminatory housing practice occurred (42 U.S.C. § 3610(b)).

The Act provides an alternative private right of civil action to enforce "[t]he rights granted [under the Act] . . ." and specifically contemplates that civil action will be grounded upon a claimed "discriminatory housing practice" (42 U.S.C. § 3612). Action under this Section is available without prior complaint to HUD.

Title VIII also provides that the Attorney General may bring a civil action in the District Court,

"Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this subchapter, or that any group of persons has been denied any of the rights granted by this subchapter and such denial raises an issue of general public importance . . ." (42 U.S.C. § 3613).

This Section contains no express limitations period. The Attorney General's right of action under this Section is independent of the rights accorded private litigants and the elements of proof necessary to establish a "pattern or practice" in violation of 42 U.S.C. § 3613 differ materially from those applicable to private suits. *United States v. West Peachtree Tenth Corp.*, 437 F.2d 221 (5th Cir. 1971).

As discussed at pp. 25-26, *infra*, this Section does not create any private right of action.

Thus, in creating a private right of action under Title VIII, Congress proscribed specifically defined "discriminatory housing practices" and required that a complaint be brought upon a verified complaint within 180 days after the act occurred. The specific violations claimed by petitioners are that, within the 180-day period prior to May 14, 1970, Metropolitan engaged in discriminatory housing practices against unidentified third parties. The factual and legal issues presented by these claims will be whether Metropolitan, during the relevant period: refused to rent or to negotiate for the rental of a dwelling to any person because of that person's race, color, religion or national origin; or discriminated against any person in the terms, conditions or privileges of rental, or in the provision of services or facilities in connection with rental, on such grounds; or misrepresented to any person the availability of a dwelling for inspection or rental on such grounds. Determination of these questions would require detailed inquiry at trial into what persons made application to Parkmerced during such 180-day period; what each such applicant communicated to the Parkmerced staff and what such staff communicated to the applicant; whether the applicant presented himself in such manner as to demonstrate his qualification under objective financial and other non-racial criteria established by Metropolitan; whether his offer to rent was "bona fide" (42 U.S.C. § 3604(a)); and, in each case, whether any refusal to accept an application for rental, or to rent, or any misrepresentation as to availability of a dwelling, or discrimination in terms of rental, if it occurred, was in fact done or made because of such person's race, color, religion or national origin.

If the case at bar should proceed to trial, these would be the central issues to be determined. However, none of the petitioners herein was the object or victim of any of the claimed discriminatory housing practices, and none appears to have been in any way a participant in or connected with the alleged violations. None of the persons alleged to have been excluded or discriminated against is a party to this proceeding, or even identified or referred to in the complaint.

**2. Legislative History Of Title VIII Does Not Support Petitioners' Standing To Sue**

The legislative history of Title VIII is sparse but, to the extent the question of standing was adverted to, the history is most consistent with the grant of standing only to persons discriminated against.

The question is whether Congress intended to deal with segregated housing by empowering plaintiffs such as petitioners to maintain suit. As the Ninth Circuit Court of Appeals stated in its opinion below, the language of the Act and statements in Congressional debates show with clarity that Congress intended to confer rights of action upon private individuals who were the direct victims of discriminatory housing practices and brought timely suit within 180 days after the violation occurred (42 U.S.C. §§ 3610, 3612), and to empower the Attorney General to challenge a "pattern or practice of resistance to the full enjoyment" of rights secured by the Act (42 U.S.C. § 3613), but nothing in the legislative history indicates that Congress contemplated that private individuals would be entitled to maintain suit because they are dissatisfied with the degree of integration or racial makeup of their community and believe that rights have been denied to others.

Thus, although in the House and Senate debate reference was made to the effects on society as a whole of segregated housing (Pet. Br., at p. 20), by far the greater emphasis by proponents of the bill was on concrete examples of black individuals who had been discriminated against and whose rights and dignity had been offended by such discrimination.<sup>19</sup> The acts of discrimination set forth in 42 U.S.C. § 3604 concretely express the Act's emphasis on the individual who has been discriminated against as the key to the enforcement of the congressional policy against discrimination. The importance of these individual acts of discrimination is further underscored by the 180-day statute of limitations—a reflection of an intent that issues be presented concretely by those directly affected.<sup>20</sup>

Without in any way denying the crucial role in the enforcement of the Act played by private plaintiffs who have been objects of discrimination, Parkmerced Corporation, cannot agree with the petitioners' and with the United

19. See Congressional Record Vol. 114 Nos. 3 and 4 debate on H.R. 2416. Said Senator Javits: "[F]or all the reasons I have described, and particularly because it relates so directly and, indeed, so poignantly to the dignity of the individual who is affected by the denial of housing opportunity and the right to live where he and his family choose to live, that fair housing legislation is needed." 114 Cong. Rec. 2706.

Senator Hart stated "The fellow who should be on the floor of the Senate urging us to adopt the housing bill is a Negro—a Negro who . . . seeks to give his children the opportunity to live in a better neighborhood." 114 Cong. Rec. 3247.

Senator Mondale referred, on several occasions, to witnesses who had appeared before the subcommittee at hearings on discrimination in housing: "Two of our witnesses, Negroes who could not buy suitable housing, were typical. One was a Navy Lieutenant with 8 years of experience . . . [T]he other was a distinguished professor of literature . . . Both of them had spent months going to homes which had "For Sale" signs out in front . . . only to be rejected, . . . simply because of their color." 114 Cong. Rec. 293. See also speeches by Senators Kennedy, Proxmire, Brooke, and Hatfield in support of H.R. 2516 in Vol. 114 Cong. Rec. Nos. 3 and 4.

20. 42 U.S.C. § 3610(b).

States' position in its amicus brief that the Congressional debates indicate an intention to make standing to enforce the Act extend to those in petitioners' positions<sup>21</sup>.

In one of the few explanations of details of the bill, Senator Mondale, who with Senator Brooke sponsored the amendment to H.R. 2516 which contained the fair housing provisions, submitted a series of questions and answers on the bill. The response to the question of how the Act would be enforced contained the statement: "Persons who believe they have been discriminated against may file a charge with the Department [HUD]. If the Department decides to process the charge, it will so notify the person. If it decides not to, or fails to give notice within 30 days, the person can bring his own action in any court of competent jurisdiction."<sup>22</sup> The Dirksen Amendment which was eventually substituted for the Mondale amendment and which was the final form of the bill, somewhat reduced the role of HUD and gave persons who have been discriminated against the option of going directly to court (42 U.S.C. § 3612). There is, however, no change in the language of "persons aggrieved" and no mention in later speeches

21. The Government's interpretation of the legislative history of the Act is particularly tenuous. For example, the Government states:

"It is noteworthy too that the only specific objection to the standing provision voiced in either the House or the Senate was that it was too broad." (Amicus Br., text at fn. 29, p. 16).

The footnote indicates that this statement refers to comments made by Representative Pucinski. In fact, Representative Pucinski's criticism of the enforcement provisions went to the fact that a right of action is accorded to those who believe they *will be* injured by an action that is about to occur. "No other law provides such a broad basis for action even before a discriminatory act actually occurs." Mr. Pucinski also objected to the broad powers the Act gave federal officials in the local community. 114 Cong. Rec. 9603-04.

22. 114 Cong. Rec. 2273.

supporting the bill that the original purpose, described by Senator Mondale, of enforcement by "persons who believe they have been discriminated against" had been changed.<sup>23</sup>

We submit that it is impossible to find in this legislative history support for petitioners' position that they have the right to relief under the provisions of Title VIII. A Congressional intent to extend to those not the direct objects of discrimination the right to challenge the alleged acts of discrimination cannot be inferred merely from the failure of Congress to state *specifically* that they do not have standing. This Court should require a clearer expression of legislative intent than mere silence before it permits the extension of standing to sue which petitioners seek in this case of first impression.<sup>24</sup>

**2. THE SUGGESTION OF THE ASSISTANT REGIONAL ADMINISTRATOR OF HUD THAT PETITIONERS HAVE STANDING UNDER TITLE VIII IS NOT ENTITLED TO WEIGHT**

Petitioners argue that HUD "determined" that they are "persons aggrieved" under Title VIII and that this determination is entitled to great deference and weight (Pet.

23. Senators Mondale and Brooke in moving to table their own amendment so that Senator Dirksen's might be substituted stated that "... the essential difference between the Mondale-Brooke amendment and the amendment about to be introduced" was that their amendment covered 7 million more housing units than did Senator Dirksen's. 114 Cong. Rec. 4568. No mention of change in standing to enforce the Act was made.

24. It is noteworthy that, where Congress intended to create a general right of action in the public to secure certain civil rights, it had no difficulty in drafting legislation which specifically and clearly so provides. See, for example, the public accommodations provisions of The Civil Rights Act of 1964, which provide that "[a]ll persons shall be entitled to the full and equal enjoyment of . . . facilities . . . without discrimination or segregation . . ." (42 U.S.C. § 2000(a)). See *Bailey v. Patterson*, 369 U.S. 31 (1962), upholding a right of action in those who are the users of public accommodations.



Br., p. 21). This "determination", which followed a discussion between petitioners' counsel and the Assistant Regional Administrator of HUD, is contained in a letter from the Assistant Regional Administrator to petitioners' counsel, dated November 5, 1970, reporting the status of HUD's investigation.<sup>25</sup>

As this Court observed in *Skidmore v. Swift*, 323 U.S. 134, 140 (1944):

"The weight of [an administrative determination] in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control."

It is apparent from the face of the letter that the HUD investigation had been stalled by personnel shortages. The "determination" of standing was made *ad hoc* by the regional HUD office upon incomplete investigation and with-

25. The text of the letter (Ex. D to R. Ex. J) is as follows:

"Subject: Trafficante, Cooney and Carr (VI-70-5-155, VI-70-5-156, VI-70-5-157) vs. Park Merced Metropolitan Life Ins. Co.

This letter is to inform you of the status of the complaint of your above mentioned clients. As was explained to you in previous conversations with Marvin R. Smith and Robert Jeffrey of this office, our efforts have been hindered by the acute manpower shortage and the overwhelming caseload which we have experienced. I assure you that the matter is still under investigation and efforts are being exerted to resolve the dispute expeditiously.

As previously discussed with you, it is the determination of this office that the complainants are aggrieved persons and as such are within the jurisdiction of Title VIII of the 1968 Civil Rights Act.

I appreciate your cooperative efforts in this matter.

Sincerely,

Clifton R. Jeffers  
Assistant Regional Administrator"



out communication with respondents or an opportunity for either of them to be heard. None of the factors of reliability and persuasiveness referred to in *Skidmore* is present.

HUD's comment on standing is gratuitous, in that it was not made in the course of administrative adjudication or rulemaking. HUD is granted broad investigative powers. The fact that HUD evidences willingness to accept a complaint for purposes of investigation cannot be equated with an adjudicative determination that these petitioners have standing to maintain federal court proceedings.

**C. DENIAL OF STANDING TO PETITIONERS HEREIN WILL NOT IMPAIR THE EFFECTIVE REALIZATION OF RIGHTS SECURED BY TITLE VIII**

Petitioners and the Solicitor General suggest that, unless standing is allowed here, enforcement of Title VIII will be crippled and the role of private citizens to proceed as "private attorneys general" to vindicate public interests and to attack "patterns or practices" of discrimination will be gravely impaired. None of these contentions has merit.

**1. Title VIII Provides Material Incentives To Suits, And Persons Claiming They Were Discriminated Against Have In Fact Brought Suits**

Title VIII provides the incentives of the award of actual damages, affirmative relief and discretionary punitive damages, court costs and attorneys' fees which will ensure active pursuit of their rights by persons who believe they have been discriminated against (42 U.S.C. § 3602(c)). Such persons are neither disabled from suit nor denied a forum<sup>26</sup> and there is no reason to conclude they will not enforce their rights. As noted at pp. 5-6, *supra*, while the appeal herein was pending before the Circuit Court, peti-

26. Compare *Eisenstadt v. Baird*, ..... U.S. ...., 92 S.Ct. 1029 (1972), discussed at page 33, *infra*, in which the persons whose rights were denied were not subject to prosecution and "... to that extent, are denied a forum in which to assert their own rights." (92 S.Ct. at p. 1034).

tioners' attorneys filed the complaint in *Burbridge, et al. v. Parkmerced Corporation, et al.*, upon virtually identical allegations of racial discrimination at Parkmerced. The plaintiffs in *Burbridge* are five Negroes who claim that they personally were excluded from Parkmerced by acts of discrimination and they bring suit purportedly on behalf of a class of all persons similarly situated.

**2. The Role Of Private Citizens To Proceed As "Private Attorneys General" Will Not Be Affected**

We do not dispute that private plaintiffs have an important role in the enforcement of Title VIII, or that such plaintiffs, in appropriate cases, proceed as "private attorneys general" vindicating important public interests. However, we have encountered no case in which a plaintiff is entitled to proceed, as a "private attorney general" or otherwise, unless that plaintiff claims direct personal injury to him and demonstrates concrete adverseness on the issues to be litigated.

The question whether public interests beyond the plaintiff's private claim are involved is wholly distinct from the question whether the plaintiff's relation to the controverted issues raised by the complaint is within recognized bounds of standing. The suggestion that petitioners here must be accorded standing as quasi-attorneys general is no more than an argument that petitioners should have standing because they seek the kind of relief which an appropriate plaintiff might seek. Such an argument misconceives the function of standing to limit court proceedings to plaintiffs with the appropriate direct interest in the issues to be determined.

The private attorney general role is similar to that of a class action plaintiff, and courts have been strict in pro-

testing the public interests represented by a plaintiff whose standing is clear.<sup>27</sup>

In short, the plaintiff who "takes on the mantle of the sovereign" (*Jenkins v. United Gas Corp.*, 400 F.2d 28, 32 (5th Cir. 1968)) is always one whose relation to the immediate controversy is well within the recognized bounds of standing.

**2. Denial Of Standing To These Petitioners Will Not Frustrate Or Impair Attacks Upon "Patterns Or Practices" Of Discrimination**

Both petitioners and the Solicitor General suggest that petitioners and other private plaintiffs have standing to challenge a "pattern or practice" of discrimination. As a matter of statutory construction, it would appear clear beyond question that 42 U.S.C. § 3613 does not confer a private right of action upon individuals and that a private complaint which alleges no more than a "pattern or practice" of discrimination sufficient to sustain action by the Attorney General would necessarily be dismissed for failure to state an actionable claim.

Title VIII provides that the Attorney General may bring a civil action to challenge a "... pattern or practice of resistance to the full enjoyment of any of the rights granted by [the Act] ..." or the denial of rights to a "group" raising

27. For example, courts have decided that subsequent satisfaction of the original plaintiff's claim did not moot all of the individual grievances or those of the class he represented, *Jenkins v. United Gas Corp.*, 400 F.2d 28 (5th Cir. 1968); or that when a class action based on employer discrimination claims was properly brought, those subsequently joined need not have submitted their individual grievances to the E.E.O.C., *Bowe v. Colgate Palmolive Co.*, 416 F.2d 711 (7th Cir. 1969) and *Madlock v. Sardis Luggage Co.*, 302 F. Supp. 866 (N.D. Miss. 1969); or that use of union grievance arbitration tolls the statute of limitations for filing an E.E.O.C. claim, *Hutchings v. United States Industries, Inc.*, 428 F.2d 303 (5th Cir. 1970); or that a poorly filled out E.E.O.C. complaint subsequently amended is no bar to an action, *Sanchez v. Standard Brands, Inc.*, 431 F.2d 455 (5th Cir. 1970).

an issue of "general public importance" (42 U.S.C. § 3613). The Attorney General's right of action under this Section is independent of the right of private suit. It is not subject to an express limitations period. The elements of proof necessary to establish a "pattern or practice" differ materially from those applicable to private suits. *United States v. West Peachtree Tenth Corp.*, 437 F.2d 221 (5th Cir. 1971); *United States v. Bob Lawrence Realty, Inc.*, 313 F. Supp. 870 (N.D. Ga. 1970); *United States v. Mintzes*, 304 F. Supp. 1305 (D. Md. 1969).

The fact that a proper private plaintiff whose standing to sue is clear may in appropriate circumstances maintain a class action or obtain broad affirmative relief does not place a private plaintiff in the position of the Attorney General to maintain a "pattern or practice" suit under 42 U.S.C. § 3613.<sup>28</sup>

**D. THE LEGAL AUTHORITIES CITED BY PETITIONERS DO NOT SUPPORT THEIR STANDING TO MAINTAIN A PRIVATE SUIT UNDER TITLE VIII TO LITIGATE THE RIGHTS OF ABSENT THIRD PARTIES**

Petitioners rely upon a broad range of cases, each of which is distinguishable from and inapposite to the case at bar. They rely upon cases in which citizens and citizen groups have been allowed standing to challenge agency action of government officials; cases in which the plaintiffs (whether or not minority persons) suffered direct and immediate personal injury of the kind which the applicable

---

28. For these reasons, the criticism advanced by the Solicitor General and by petitioners of the statement of the Ninth Circuit Court of Appeals that the Act grants to the Attorney General, and not private plaintiffs, the right to sue to correct "patterns and practices" of discrimination is not well taken (Pet. Br., App. A, at pp. 6-7; see Pet. Br., p. 29; Amicus Brief of the United States, at p. 20). The Court's statement cannot be construed as suggesting that, if a "pattern or practice" exists, a private plaintiff who otherwise would have a perfected right of action under 42 U.S.C. §§ 3610 or 3612 is disabled from suit.

statute was designed to prevent; cases in which plaintiffs, for policy reasons not here applicable, were found entitled to assert the rights of others; and cases arising under the public accommodations provisions of the 1964 Civil Rights Act, or under the equal employment and labor laws, which involve particular legislative policies and statutory language unlike that presented here. These lines of authority are discussed below and involve factual situations, statutes and judicial and legislative policy considerations different from and wholly inapplicable to those at issue.

#### 1. Cases Involving A Citizen's Challenge To Governmental Agency Action

The bulk of the cases relied upon by petitioners are cases where the court found that private citizens and citizen groups have standing to challenge agency and other action of government officials upon allegations that such officials have failed either to perform duties imposed by law or properly to take account of public interests which such officials are required by law to protect.<sup>29</sup>

These cases reflect a policy to permit private suit in order to insure the competence, regularity, fairness and

29. E.g., *Sierra Club v. Morton*, ..... U.S. ...., 92 S.Ct. 1361 (1972); *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150 (1970); *Barlow v. Collins*, 397 U.S. 159 (1970); *Carter v. Greene County*, 396 U.S. 320 (1970); *Brown v. Board of Education*, 347 U.S. 483 (1954); *Flast v. Cohen*, 392 U.S. 83 (1968); *Rogers v. Paul*, 382 U.S. 198 (1965); *Kennedy Park Homes Association, Inc. v. City of Lackawanna*, 436 F.2d 108 (2d Cir. 1970), cert. den., 401 U.S. 1010 (1971); *Shannon v. HUD*, 436 F.2d 809 (3rd Cir. 1970); *Wheeler v. Durham City Board of Education*, 363 F.2d 738 (4th Cir. 1966); *Sisters of Providence of St. Mary of the Woods v. City of Evanston*, 335 F. Supp. 396 (N.D. Ill. 1971); *Hobson v. Hanson*, 320 F. Supp. 409 (D.D.C. 1970); *Marable v. Alabama Mental Health Board*, 297 F. Supp. 291 (M.D. Ala. 1969); *Lee v. Macon County Board of Education*, 267 F. Supp. 468 (N.D. Ala.), aff'd per curiam, 389 U.S. 215 (1967); *Scenic Hudson Preservation Conference v. F.P.C.*, 354 F.2d 608 (2d Cir. 1965), cert. den., 384 U.S. 941 (1966); *Cf. Environmental Defense Fund, Inc. v. Hardin*, 428 F.2d 1093 (D.C. Cir. 1970).



correctness of governmental agency actions. Such action typically affects large segments of the business and social community and often involves the carrying out of plans and programs whose effects pervade the community and may be irremediable. For example, in *Sierra Club v. Morton*, \_\_\_\_ U.S. \_\_\_\_, 92 S. Ct. 1361 (1972) and *Scenic Hudson Preservation Conference v. F.P.C.*, 354 F.2d 608 (2d Cir. 1965), *cert. den.*, 384 U.S. 941 (1966), the controversy centered on the environmental, ecological and social impact of wilderness and river development plans whose effects, if carried out, at least arguably, could not be reversed or restored within a millennium. In many cases, the adverse impact of the agency action is generalized throughout all or a large segment of society and the direct, personal injury to any complainant may be barely perceptible (e.g., *Flast v. Cohen*, 392 U.S. 83 (1968)). But, unless concerned citizens are allowed standing, these important social interests may have no spokesman at all and there may be no effective check upon abuses by government officials (e.g., *United Church of Christ v. F.C.C.*, 359 F.2d 994 (D.C. Cir. 1966)). Notwithstanding, this Court continues to require a strict showing of direct, personal injury as a prerequisite to suit (*Sierra Club v. Morton, supra*).

Recent cases in this Court have concerned standing to review government agency action, and have not concerned the question of standing of private plaintiffs to maintain suit against other private persons.<sup>30</sup> While these cases provide guidance as to the "Case" or "Controversy" limits of the judiciary's Article III powers, they do not determine the case at bar. In applying these cases, lower courts have

---

30. See, for example, *Sierra Club v. Morton, supra*; *Flast v. Cohen, supra*; *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150 (1970); *Arnold Tours, Inc. v. Camp*, 400 U.S. 45 (1970); *Investment Company Institute v. Camp*, 401 U.S. 617 (1971).

emphasized that their broad impact is restricted to the review of agency action. For example, in *Connecticut Action New, Inc. v. Roberts Plating Co., Inc.*, 457 F.2d 81 (2d Cir. 1972), the Court of Appeals denied standing to private citizens to bring injunctive proceedings against an alleged polluter of navigable waters. The applicable federal statute placed the duty to conduct such proceedings in the Department of Justice (Compare 42 U.S.C. § 3613). The Court distinguished *Data Processing, Scenic Hudson*, and similar cases on the ground that they involved challenges to government action, and explained:

"It is one thing to reduce the showing of legal wrong, adverse effect, or aggrievement (see 6 U.S.C. § 702) when a citizen seeks judicial scrutiny of actions proposed to be taken by the Government, and quite another to allow one citizen to bring suit on behalf of the general public against a private individual who has done no more harm to him than to all the others comprising the public. In the former case, the question is who may ask the courts to keep Government itself within lawful bounds. The latter deals with the separate issue of who may represent the public in seeking to confine private individuals within the law. To allow any citizen to perform that function, normally fulfilled by the Government, would obviously raise grave problems for equal, fair, and consistent law enforcement." (457 F.2d at pp. 89-90).

See also *Solien v. Misc. Drivers and Helpers Union, Local No. 610*, 440 F.2d 124, 132 (8th Cir.), cert. den., 403 U.S. 905 (1971) in which the Court of Appeals affirmed denial of standing to the employer-company to intervene or otherwise be a party to injunctive proceedings by the N.L.R.B. against a union. The Court analysed *Data Processing* and its companion case, *Barlow v. Collins*, 397 U.S. 169 (1970), in the following terms:



"Both *Data Processing* and *Barlow* presented the question of what interest one must allege in order to establish that he is sufficiently aggrieved by an administrative order to be entitled to judicial review under the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*, of the adverse agency action. The decisions in both cases can fairly be said to represent a trend 'toward enlargement of the class of people who may protest administrative action' where statutes are concerned. *Data Processing Service*, 397 U.S. at 154, 90 S.Ct. at 830. Since we are concerned with the issue of whether charging parties have the right to obtain appellate review from a judicial order in a § 10(1) proceeding and not the right of judicial review of administrative action, *Data Processing* and *Barlow* are not controlling." (440 F.2d at p. 132) [Emphasis in original]

Parkmerced is a privately owned and privately financed complex which operates without government assistance or involvement and cannot be characterized as acting for any level of government.<sup>31</sup> Further, Parkmerced neither assumes nor performs obligations of the state, such as fire, safety or health care, nor opens itself to unrestricted public access so as to take on the character of a municipality or public facility.<sup>32</sup>

**2. Cases in Which The Plaintiffs Have Suffered Direct Personal Injury Cognizable Under The Relevant Statute**

Petitioners also rely upon cases in which the particular persons claiming standing, whether or not themselves members of the minority group discriminated against, suffered

31. Compare *Browns v. Mitchell*, 409 F.2d 593 (10th Cir. 1969); Cf. *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961).

32. *Lloyd Corp., Ltd. v. Tanner*, ..... U.S. .... [40 U.S.L.W. 4829], (June 22, 1972); Compare *Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc.*, 391 U.S. 308 (1968); *Marsh v. Alabama*, 326 U.S. 501 (1946).

direct personal injury of the kind which the statute involved sought to prevent. For example, petitioners cite cases where white persons were denied the use of public accommodations because they were in the company of Negroes,<sup>33</sup> or were summarily ejected from their apartment because they invited Negroes as their guests,<sup>34</sup> or were expelled from a community club because they conveyed property to a Negro,<sup>35</sup> or were subjected to a civil action for damages because they sold property to a non-Caucasian in violation of a legally unenforceable racial covenant.<sup>36</sup>

Petitioners in the case at bar do not allege a similar direct, personal injury to them resulting from the discriminatory housing practices described in the complaint. They complain of the generalized impact upon them and the rest of the community of an asserted racial imbalance which they find unacceptable.<sup>37</sup>

In *Sierra Club v. Morton*, \_\_\_\_\_ U.S. \_\_\_\_\_, 92 S. Ct. 1361 (1972), this Court emphasized that:

"... a mere 'interest in a problem,' no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization 'adversely affected' or 'aggrieved' within the meaning of the APA."

. . .

"The requirement that a party seeking review must allege facts showing that he is himself adversely affected does not insulate executive action from judicial

33. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144 (1970); *Valle v. Stengel*, 176 F.2d 697 (3d Cir. 1949); *Tolg v. Grimes*, 355 F.2d 93 (5th Cir.), cert. den., 384 U.S. 988 (1966); *Offner v. Shell's City, Inc.*, 376 F.2d 574 (5th Cir. 1967).

34. *Walker v. Pointer*, 304 F. Supp. 56 (N.D. Tex. 1969).

35. *Sullivan v. Little Hunting Park*, 396 U.S. 230 (1969).

36. *Barrows v. Jackson*, 346 U.S. 249 (1953); *Shelley v. Kraemer*, 334 U.S. 1 (1947).

review, nor does it prevent any public interests from being protected through the judicial process. It does serve as at least a rough attempt to put the decision as to whether review will be sought in the hands of those who have a direct stake in the outcome. That goal would be undermined were we to construe the APA to authorize judicial review at the behest of organizations or individuals who seek to do no more than vindicate their own value preferences through the judicial process." (92 S. Ct. at pp. 1368-69).

**3. Cases In Which Plaintiffs Are Permitted To Assert The Rights Of Absent Third Parties Who Are Otherwise Denied A Forum**

Petitioners cite several cases in this category.<sup>38</sup> They should not be permitted to assert the rights of third parties because petitioners do not bear a professional, fiduciary or similar relationship to those whose rights they assert, and the third parties are neither denied a forum nor disqualified from suit. They have in fact brought suit (*Burbridge, et al. v. Parkmerced Corporation, et al.*, discussed at pp. 5-6, *supra*).

While the disqualification of a party to assert the rights of absent third parties has been characterized as this Court's "... self-imposed rule ..." (*Eisenstadt v. Baird*, \_\_\_\_ U.S. \_\_\_\_, 92 S. Ct. 1029, 1034 (1972)), this Court has

---

37. The general nature of petitioners' complaints is illustrated by the affidavit of Dr. Poussaint upon which they rely for explanation of the injuries to them. (Pet. Br., pp. 13-14; the Poussaint Aff. is annexed as App. E to Pet. Br.) Dr. Poussaint is a psychiatrist residing in Massachusetts who apparently has never spoken to any of the petitioners, or any other Parkmerced residents, nor seen the Parkmerced property. His affidavit comments on the social harm to the society at large from racial imbalance. The affidavit which was submitted on a motion and not as part of a pleading, does not provide concreteness or specificity to the complaint.

38. *Eisenstadt v. Baird*, \_\_\_\_ U.S. \_\_\_\_, 92 S.Ct. 1029 (1972); *Barrows v. Jackson*, 346 U.S. 249 (1953) (See Pet. Br., pp. 27-28).

derogated the rule only where the claimants were directly injured by the denial of rights, the party bore a particular relationship to the holders of the right (e.g., doctor-patient), and such holders were, by applicable law or otherwise, disabled from suit in their own behalf or denied a forum for the assertion of their rights.<sup>39</sup> For example, in *Eisenstadt*, the appellee Baird had established himself as an advocate to challenge Massachusetts' criminal laws limiting the distribution of contraceptives and had been convicted of criminal violation of those laws. This Court emphasized that potential users of contraceptives were not subject to prosecution and "... to that extent, are denied a forum in which to assert their own rights." (92 S. Ct. at p. 1034).

Similarly, in *Griswold v. Connecticut*, 381 U.S. 479 (1965), the defendant asserting third party rights was Executive Director of the Planned Parenthood League of Connecticut and a licensed physician who had prescribed contraceptives and had been convicted as accessory to the crime of using contraceptives under Connecticut law. In *Barrows v. Jackson*, 346 U.S. 249 (1953), a party had sold land to a non-caucasian and was subjected to a damage action for breach of a racially restrictive covenant.

Compare *Tileston v. Ullman*, 318 U.S. 44 (1943), holding that a physician, who had not been prosecuted under the Massachusetts contraceptive laws but claimed he feared such prosecution, does not have standing. This Court questioned whether plaintiff presented a "... genuine case or controversy essential to the exercise of the jurisdiction of this Court" (318 U.S., at p. 46). *Tileston* was cited with ap-

<sup>39</sup> *Eisenstadt v. Baird*, *supra*; *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Barrows v. Jackson*, 346 U.S. 249 (1953); *Of. Tileston v. Ullman*, 318 U.S. 44 (1943); *Younger v. Harris*, 401 U.S. 37 (1971).

proval in the recent *Eisenstadt* decision of this Court, and has been followed by lower courts.<sup>40</sup>

In *Younger v. Harris*, 401 U.S. 37 (1971), this Court considered the standing of intervenors who claimed that the California Criminal Syndicalism Act inhibited their freedom of speech as members of The Progressive Labor Party and college instructors. This Court held that Harris, who had been indicted under the Act, presented "... an acute, live controversy with the State and its prosecutor" (401 U.S. at p. 41), but denied standing to intervenors because they were not subject to imminent prosecution and they did not present a "genuine controversy" (401 U.S. at p. 42).

4. Cases Arising in The Areas Of Public Accommodations And Labor Relations Under Statutory Schemes Unlike Title VIII

Petitioners refer to cases arising under laws forbidding discrimination in public accommodations and to labor relations cases (Pet. Br., pp. 26-27). These cases involved claimants whose direct, personal injury was clear and, in any case, arose under statutes which are wholly unlike Title VIII.

For example, *Bailey v. Patterson*, 369 U.S. 31 (1962), held that passengers in segregated public facilities had standing to enforce a right to non-segregated treatment. The section of the 1964 Civil Rights Act applicable in *Bailey* provides:

"All persons shall be entitled to the full and equal enjoyment . . . of any place of public accommodation . . . without discrimination or segregation on the ground of race, color, religion, or national origin." (42 U.S.C. § 2000a(a)).

40. E.g., *Meyer v. Massachusetts Eye and Ear Infirmary*, 330 F. Supp. 1328 (D. Mass. 1971), in which a staff doctor was denied standing to raise the rights of private and clinic patients in the hospital.



This Section clearly grants a right to "all persons" to enjoy public accommodations "without discrimination or segregation". No comparable right is created by Title VIII. In most of the public accommodation cases cited by petitioners, the plaintiffs had in fact been directly injured by exclusion or harassment.<sup>41</sup>

Petitioners also misplace their reliance on labor and employment cases.<sup>42</sup> A number of the cases establish no more than the proposition that an employer's racial policies are proper subjects for collective bargaining and negotiation and that an employee's rights to such bargaining and negotiation are protected by the labor laws.<sup>43</sup> In many of these cases, the direct, personal injury to the complainant was clear, in that he had been in fact excluded or discharged from employment.<sup>44</sup>

41. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144 (1970); *Offner v. Shell's City, Inc.*, 376 F.2d 574 (5th Cir. 1967); *Tolg v. Grimes*, 355 F.2d 92 (5th Cir.), cert. den., 384 U.S. 988 (1966); and *Nesmith v. Alford*, 318 F.2d 110 (5th Cir. 1963). The latter case arose under 42 U.S.C. § 1983.

42. *N.L.R.B. v. Tanner Motor Livery, Ltd.*, 349 F.2d 1 (9th Cir. 1965); *New Negro Alliance v. Sanitary Grocery Co.*, 303 U.S. 552 (1938); *Rogers v. E.E.O.C.*, 454 F.2d 234 (5th Cir. 1971); *Carr v. Conoco Plastics, Inc.*, 423 F.2d 57 (5th Cir. 1970).

43. E.g., *N.L.R.B. v. Tanner Motor Livery, Ltd.*, 349 F.2d 1 (9th Cir. 1965), construing Section 7 of the National Labor Relations Act, 29 U.S.C. § 157; Cf. *New Negro Alliance v. Sanitary Grocery Co.*, 303 U.S. 552 (1938), applying the Norris-LaGuardia Act, 29 U.S.C. §§ 104, 107(a-e), 113 (a-c), to protect picketing by non-employees.

44. *Rogers v. E.E.O.C.*, 454 F.2d 234 (5th Cir. 1971); *N.L.R.B. v. Tanner Motor Livery, Ltd.*, 349 F.2d 1 (9th Cir. 1965); *Carr v. Conoco Plastics, Inc.*, 423 F.2d 57 (5th Cir.), cert. den., 400 U.S. 951 (1970). The facts of *Carr* illustrate the deficiencies in petitioners' standing here: the *Carr* plaintiffs had been excluded from employment and brought a class action on behalf of themselves and all others (including employees) discriminated against. The individual plaintiffs' standing was not at issue, and the sole question before the court was the propriety of the class, which the court upheld (423 F.2d at pp. 62-66).

Cases in the labor relations area are affected by a national labor policy inapplicable to the case at bar. The policy of our labor laws, formed and developed over many years, has been to substitute arbitration and collective bargaining for industrial strife. Mr. Justice Harlan characterized the collective bargaining agreement as:

" . . . [A] generalized code to govern a myriad of cases. . . . The collective agreement covers the whole employment relationship. It calls into being a new common law—the common law of a particular industry or of a particular plant." *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 550 (1964), quoting *United Steel Workers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 578-79 (1960).

As a result of these policies, courts have given the greatest breadth to the "terms and conditions" of employment which may properly be made part of bargaining. The fair employment provisions of the Civil Rights Act of 1964 are phrased in terms far broader than Title VIII and do not provide an accurate analogy.<sup>45</sup>

## II. Standing To Maintain Suit Under 42 U.S.C. § 1982 Is Limited To Those Directly Injured By The Claimed Violation

The terms of 42 U.S.C. § 1982 are declaratory and very broad:

"Section 1982. *Property rights of citizens.* All citizens of the United States shall have the same right, in

### 45. It is declared unlawful:

"[T]o fail or refuse to hire or to discharge any individual or otherwise to discriminate . . ." (42 U.S.C. § 2000e-2(a)(1)); "[T]o fail or refuse to refer for employment or otherwise discriminate . . ." (42 U.S.C. § 2000e-2(b)); "[T]o exclude or to expel from its membership, or otherwise to discriminate . . ." (42 U.S.C. § 2000e-2(c)); and with respect to training programs, "[T]o discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training." (42 U.S.C. § 2000e-2(d)) (emphasis added).



every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property."

Its applicability to a given situation can only be determined by examining the instances in which rights have been upheld under its provisions.

This Act has been construed to provide standing to a Negro person refused the right to purchase or lease property on the basis of race, *Jones v. Alfred H. Mayer Company*, 392 U.S. 409 (1968), *Harris v. Jones*, 296 F. Supp. 1082 (D. Mass. 1969); to a white person expelled from membership in a community pool club because he rented property and assigned membership rights to a Negro, *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229 (1969); and to white persons summarily evicted from leased premises because they entertained Negro guests, *Walker v. Pointer*, 304 F. Supp. 56 (N.D. Tex. 1969). However, we have found no case which purports to confer standing under 42 U.S.C. § 1982 to persons in petitioners' position—i.e., those not the direct objects of, or directly affected by, a violation of the act.

All of the petitioners here are themselves tenants of Parkmerced. None of them has been denied the right to lease or hold real property which the Act by its terms provides. The petitioners base their complaints under 42 U.S.C. § 1982 upon the identical factual allegations of the claims of discriminatory housing practices in violation of Title VIII (see pp. 4-5, *supra*). As discussed in the preceding portions of this brief, these petitioners lack the direct, personal interest or concrete adversity upon the issues to be determined sufficient to confer upon petitioners standing to litigate the alleged denial of the rights of others. In addition, such litigation would be inconclusive, in that the

persons whose rights allegedly were deprived are not present and would not be bound by the result.

**III. Dismissal Of The Complaints Against Parkmerced Corporation Should Be Affirmed On The Additional Ground That Parkmerced Corporation Did Not Participate In The Alleged Violations And Cannot Be Compelled To Litigate, Or Be Held Liable For, Alleged Misconduct Of Metropolitan**

As stated at pp. 6-7, *supra*, Parkmerced Corporation acquired the Parkmerced complex from Metropolitan on December 21, 1970, many months after the filing of the complaints herein. Petitioners moved the joinder of Parkmerced Corporation as a defendant pursuant to F.R.Civ.P. 25(c), and in opposition to joinder and in support of its subsequent motion to dismiss the complaints,<sup>46</sup> Parkmerced Corporation contended that the petitioners had not shown facts sufficient to warrant the court's requiring Parkmerced Corporation to endure the risks, dislocations and expense of this litigation, or be subject to affirmative or other relief. In their amended complaints, petitioners assert that Parkmerced Corporation "... is legally obligated to take ... affirmative action ..." to correct the effects of the alleged discriminatory housing practices followed by Metropolitan and to desist from any practice which would continue the effects of past discriminations (Pet. Br., App. D, para. 5 at p. 3).

46. Parkmerced Corporation's joinder under F.R.Civ.P. 25(c) was ordered by the District Court on December 30, 1970. As ordered by the Court, on January 5, 1971, petitioners filed an amendment to their complaints purporting to state a cause of action against Parkmerced Corporation (set forth as Appendix D to petitioners' brief). Thereafter, Parkmerced Corporation filed its motion to dismiss the complaints on two grounds: first, that petitioners lacked standing to sue; and second, that the amended complaints failed to state a cause of action against Parkmerced Corporation (F.R. Civ. P. 12(b)(6)). In their opinions below, neither the District Court (App. 1-3) nor the Ninth Circuit Court of Appeals considered the latter ground for dismissal (Pet. Br., App. A, fn. 4 at p. 2).

The basis upon which petitioners would require Parkmerced Corporation to be joined and be subject to injunctive relief is that Parkmerced Corporation, prior to its purchase, had notice of petitioners' charges. Petitioners also advance the patently insubstantial grounds that, during the two-week interval between Parkmerced Corporation's purchase and the filing of the amended complaints, no "substantial change in the business operations" was effected, and that the Parkmerced tenants were advised at the time of the sale that there would be no change in the Parkmerced staff (App. D. to Pet. Br.). (See pp. 6-7, *supra*).

**A. PARKMERCED CORPORATION WAS UNCONNECTED WITH METROPOLITAN'S CONDUCT, AND HAS ASSUMED FULL OPERATIONAL CONTROL INDEPENDENT OF METROPOLITAN**

Parkmerced Corporation had no connection of any kind with the rental policies and procedures followed by Metropolitan at the Parkmerced complex during the complaint period. There is no basis in fact for an assertion (and no assertion is made) that Parkmerced Corporation (or its promoters, incorporators, or stockholders) at any time influenced Metropolitan's pre-complaint conduct, or that the sale of Parkmerced was a "sham" transfer or was in any way motivated by a desire to avoid or frustrate enforcement of civil rights. Parkmerced Corporation paid full value for the Parkmerced properties and, upon the closing of the sale on December 21, 1970, it assumed complete and independent operating control. Metropolitan has had no responsibility for operating and rental policies of the Parkmerced property after that date. None of the policies or practices which Parkmerced Corporation is alleged to have continued after the purchase is itself claimed to be a discriminatory housing practice in violation of Title VIII or 42 U.S.C. § 1982.

**B. TITLE VIII AND 42 U.S.C. § 1982 SHOULD NOT BE APPLIED TO BURDEN PURCHASERS UNCONNECTED WITH THE ALLEGED DISCRIMINATORY CONDUCT**

The vice of the compulsory joinder of Parkmerced Corporation is that it is forced to endure the risks, dislocation and expenses of the trial of factual and legal issues in dispute between petitioners and Metropolitan, which are wholly foreign to Parkmerced Corporation. Parkmerced Corporation simply has no knowledge of the facts and cannot reasonably be expected to defend another's conduct, most particularly where the motive, intent and purpose of such conduct are at issue. The litigation promises to be protracted. Metropolitan has denied wrongdoing and undoubtedly will continue to do so. Parkmerced Corporation has been exposed to adverse periodical and newspaper publicity which prominently identifies it with the lawsuit. Petitioners have demanded broad affirmative relief to correct the alleged racial imbalance and remedy the effects of alleged past discriminations by Metropolitan. It is impossible to foresee what that relief might entail, or the adverse impact the relief might have upon Parkmerced Corporation, its operations and its financial prospects.

The practical consequences of a rule which permits or requires joinder of a disinterested purchaser simply because it has notice that charges of discriminatory housing practices have been made against the seller would be unwarrantedly severe. While such a purchaser can obtain indemnification by the seller against the direct costs of suit, as Parkmerced Corporation has done here, there is no practical means by which the purchaser can obtain protection or indemnification against the ill effects upon it of the protracted litigation, the adverse publicity, or the pervasive affirmative relief. It is impractical to suggest that a seller and purchaser in such a position might agree that, if the claimant should prevail, the purchaser would have the right

to "unwind" the transactions and restore the burden of affirmative relief to the seller. Complex real estate transactions involve the financial and tax planning and commitment of many entities and cannot be held in an uncertain status during years of litigation, or readily dismantled if the litigation result should be adverse. In effect, such a rule provides persons willing to launch civil rights complaints against a seller with the kind of leverage, by the mere filing of a complaint, that would be expected to frustrate and make impractical consummation of the real estate transaction.

Neither Title VIII nor 42 U.S.C. § 1982, by its terms, requires that affirmative relief be extended to an independent purchaser, such as Parkmerced Corporation. Both Title VIII and 42 U.S.C. § 1982 proscribe specific discriminatory conduct. Neither Act prescribes a kind or degree of integration, or racial, religious or other mixture which is sought or required for compliance. Parkmerced Corporation, or any other purchaser, is entitled to own and operate an apartment complex that is all White, all Negro, all Oriental—of any racial or ethnic character—so long as Parkmerced Corporation does not itself discriminate in violation of the Acts.

As an equitable matter, Parkmerced Corporation should not be required to remain a party to this litigation or be subjected to the threat of injunctive relief unless the petitioners allege in good faith and prove that it is an "instrumentality" or "alter ego" of Metropolitan, or that the sale to Parkmerced Corporation was a "sham", or made for the purpose of avoiding civil rights compliance. Mere purchase of assets of an entity charged with violation of the law will not, in itself, justify equitable relief against the purchaser. See *United States v. Johns-Manville Corp.*, 245 F. Supp. 74, 82 (E.D. Pa. 1965), in which the trial court



refused to enter injunctive relief against a purchaser of assets from a defendant found to have violated the anti-trust laws. In discussing the propriety of entering an injunction forbidding securities laws violations against defendant corporate officials in their individual capacities, the Court of Appeals for the Tenth Circuit stressed the importance of participation in a wrong as a basis for imposing injunctive relief:

"But also traditionally in equity, where there is a right to issue a general injunction in a situation, the court has the power inherently to impose upon any persons, who have contributingly played a part in the doing or committing of the enjoined action involved (where they are made party to the suit), such reasonable and relevant individual restraint as may be necessary to enable the decree to accomplish its preventive purpose." *S.E.C. v. Barraco*, 438 F.2d 97, 98 (10th Cir. 1971).

The question of the proper scope and effect of an injunctive decree to bind successors in interest has been most often considered by courts in the context of F.R.Civ.P. 65(d).<sup>47</sup> A number of cases have indicated that an injunction may not bind a successor in interest unless the court finds that the successor is in "active concert" or "participation" with those against whom the injunction was entered or is availed of as a disguised continuance of the predecessor's. *Regal Knitwear Co. v. N.L.R.B.*, 324 U.S. 9 (1945); *United Phar-*

47. F.R.Civ.P. 65 (d) provides:

"(d) FORM AND SCOPE OF INJUNCTION OR RESTRAINING ORDER. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise."

*macal Corp. v. U.S.*, 306 F.2d 515 (1st Cir. 1962); Annotation, 97 ALR.2d 490. While, unlike cases arising under this Rule, Pakmerced Corporation has been made a party in the proceeding for the injunction, the equitable principles to be applied should not differ.

We anticipate that petitioners will refer this Court to cases arising in the labor relations area as authority for the assertion that a purchaser with notice properly may be bound to carry out collective bargaining agreements or remedy unfair labor practices of the seller. The trend of labor cases has been to hold successors in interest liable where the successor represents in practical effect the substantial continuance of the predecessor's enterprise.<sup>48</sup>

In contrast to Title VIII and 42 U.S.C. § 1982 in question here, labor legislation reflects an unique national policy to regulate the broad employer-employee relationship. (See discussion at pp. 34-36, *supra*) In *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543 (1964), discussed at p. 36, *supra*, the Court held that a successor by merger was bound by a preexisting collective bargaining agreement. The Court emphasized the "... substantial continuity of identity in the business enterprise ..." as central to the decision. (376 U.S., at 511)

48. Compare *U.S. Pipe & Foundry Co. v. N.L.R.B.*, 398 F.2d 544 (5th Cir. 1968) (holding that a purchaser *pendente lite*, with notice of charges against the predecessor is without more required to reinstate employees wrongfully discharged by seller), with *N.L.R.B. v. Birdsell-Stockdale Motor Co.*, 208 F.2d 234 (10th Cir. 1953) (holding that a purchaser is bound only if it bears a particular relationship with the seller, such as active participation in the wrongdoing, "disguised continuance" of the seller, instrumentality for evasion of an order, and the like). Cf. *N.L.R.B. v. Deena Artware, Inc.*, 361 U.S. 398 (1960), holding that the N.L.R.B. should be given the opportunity to prove relationships between seller and purchaser corporations to determine the enforceability against the purchaser of an order entered against the seller. The *Deena Artware* case suggests that only certain successors having particular relationships with the seller will be bound.



The practical effect of compelling a purchaser or successor corporation to carry out terms of a collective bargaining agreement, or to restore employment to specific persons who have claimed that they were wrongfully discharged, or to remedy specific claimed unfair labor practices, differs materially from the problem here. The purchaser in those situations is able to read and analyze the agreement by which he might be bound, and to review and assess the practical impact upon him of the claimed rights to employment or correction of prior practices. In contrast, Parkmerced Corporation has no notice of the particular persons who claim the right to apartments at Parkmerced and no practical means to assess the impact upon it of the broad affirmative relief which petitioners have demanded.

Moreover, Parkmerced Corporation is not in any real sense a "successor" to Metropolitan. The latter is a large, well-established company whose affairs are barely affected by the Parkmerced sale. Metropolitan is fully capable of defending its conduct and of responding in damages if a violation be found.

For these reasons, it is our position that F.R.Civ.P. 25(c) does not contemplate the joinder of a purchaser in the position of Parkmerced Corporation. The Rule applies upon the "... transfer of interest ..." and has obvious application to the successor by merger, sale of substantially all assets, or transfer of rights to a trustee in bankruptcy. The Rule also has application where a third party obtains an interest in the subject matter of the action, as by an assignment, or by the acquisition of an interest

---

49. F.R.Civ.P.25(c) reads:

"(c) **TRANSFER OF INTEREST.** In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule."

in the *res* in an *in rem* proceeding (see generally, *Moore's Federal Practice*, § 25.08 (2d ed. 1969)). While petitioners have requested affirmative relief, the action in no sense involves the title to or ownership of the Parkmerced complex; Title VIII and 42 U.S.C. § 1982 do not provide for *in rem* proceedings against specific properties. These Acts proscribe particular kinds of conduct and their violation is in the nature of a tort for which recovery may be had only against the wrongdoer. In no sense has the purchase of Parkmerced resulted in Parkmerced Corporation's acquiring an "interest" in the subject matter of the action, or in Metropolitan, so as to warrant its joinder under F.R.Civ.P. Rule 25(c).

### CONCLUSION

For the foregoing reasons, we respectfully request that this Court affirm the dismissal of petitioners' complaints herein on the ground that they lack standing to maintain suit on the causes of action stated in their complaints. Alternatively, we request that this Court dismiss the action against Parkmerced Corporation on the ground that petitioners have not shown a substantial basis for relief against Parkmerced Corporation.

Dated:

July 14, 1972,

San Francisco, California.

Respectfully submitted,

ROBERT M. SHEA,  
KATE C. FREELAND,  
DINKELSPIEL, STEEFEL, LEVITT,  
WEISS & DONOVAN

*Attorneys for Respondent  
Parkmerced Corporation*

(Appendices Follow)

## **Appendix A**

*In the United States District Court for the  
Northern District of California*

Case No. C-70 1754(RHS)

---

Paul J. Trafficante, et al.,  
*Plaintiffs,*

**and**

Committee of Parkmerced Residents Com-  
mitted to Open Occupancy, et al.,  
*Plaintiffs in Intervention,*

**v.**

Metropolitan Life Insurance Company,  
et al.,

*Defendants.*

### **MEMORANDUM OPINION AND ORDER DISMISSING COMPLAINT AND COMPLAINT IN INTERVENTION**

Plaintiffs, residents of the Parkmerced complex of apartments and town houses in San Francisco, brought this action under 42 U.S.C. § 1982 and the fair housing provisions of Title VIII of the Civil Rights Act of 1968, 42 U.S.C., Chapter 45, alleging that defendant Metropolitan, the then owner and operator of Parkmerced, was engaging in discriminatory housing practices in violation of the Act, making Parkmerced what plaintiffs have repeatedly referred to in this litigation as a "white ghetto" and depriving plaintiffs of their alleged right to live in a racially integrated community. A complaint in intervention was filed by community organizations and civic-minded individuals reiterating substantially the same claims. During the course of the litigation Metropolitan sold substantially all its interests in Parkmerced to Parkmerced Corporation, which now operates it and was joined as a defendant.

The threshold question, of course, is whether the plaintiffs have standing to maintain this action. They do not allege, nor can they, that they themselves have been denied any of the rights guaranteed by Title VIII or by 42 U.S.C. § 1982 to purchase or rent real property. Rather, they assert that the denial of such rights to others not parties to this action violates the policies of the Act and has resulted in denying them the benefits of living in the type of integrated community which Congress hoped to achieve by enacting Title VIII.

The Court, after full review of the voluminous memoranda submitted, has concluded that plaintiffs and plaintiffs in intervention have no such generalized standing as they assert to enforce the policies of the Act. More specifically, they are not "persons aggrieved" under § 810 of the Act, 42 U.S.C. § 3610(a), and therefore may not maintain this suit under § 812, 42 U.S.C. § 3612, or under 42 U.S.C. § 1982. The enforcement of the public interest in fair housing enunciated in Title VIII of the Act and the creation of integrated communities to the extent envisioned by Congress are entrusted to the Attorney General by § 814, 42 U.S.C. § 3613, and not to private litigants such as those before the Court.

In reaching this conclusion the Court is not unmindful of the "private attorneys general" cases heavily relied upon by plaintiffs, including, quite recently, *Data Processing Service v. Camp*, 397 U.S. 150 (1970). Each of such cases, however, was brought under the Administrative Procedure Act or otherwise involved action by a government agency and not the activities of private individuals such as are involved here. These cases are extensively reviewed and distinguished in *Sierra Club v. Hickel*, 433 F. 2d 24 (9th Cir. 1970).

The motions to dismiss are granted and the complaint and complaint in intervention herein are dismissed.

Dated: February 10, 1971

ROBERT H. SCHNACKE

Robert H. Schnacke

*United States District Judge*

**Appendix**

**Appendix B**

**United States Court of Appeals  
for the Ninth Circuit**

**No. 71-1325**

**Filed Sep 13 1971**

**Wm. B. Luck, Clerk**

**Paul J. Trafficante, et al.,**

***Plaintiffs and Appellants,***

**vs.**

**Metropolitan Life Insurance Company, et al.,**

***Appellees.***

**Before: CHAMBERS and CARTER, Circuit Judges,  
and JAMESON, District Judge.**

**The petition for a rehearing is denied. The suggestion for  
a rehearing en banc is rejected.**

**All active circuit judges of the court have been advised  
of the suggestion for a rehearing en banc and none has re-  
quested it.**

**Appendix C**

**C 1. FAIR HOUSING ACT OF 1968**

42 U.S.C. §§ 3601-3619

**§ 3601. Declaration of policy**

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

Pub.L. 90-284, Title VIII, § 801, Apr. 11, 1968, 82 Stat. 81.

**§ 3602. Definitions**

As used in this subchapter—

(a) "Secretary" means the Secretary of Housing and Urban Development.

(b) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) "Family" includes a single individual.

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

(e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) "Discriminatory housing practice" means an act that is unlawful under section 3604, 3605, or 3606 of this title.

(g) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

Pub.L. 90-284, Title VIII, § 802, Apr. 11, 1968, 82 Stat. 81.



**§ 3603. Effective dates of certain prohibitions—Application to certain described dwellings**

(a) Subject to the provisions of subsection (b) of this section and section 3607 of this title, the prohibitions against discrimination in the sale or rental of housing set forth in section 3604 of this title shall apply:

(1) Upon enactment of this subchapter, to—

(A) dwellings owned or operated by the Federal Government;

(B) dwellings provided in whole or in part with the aid of loans, advances, grants, or contributions made by the Federal Government, under agreements entered into after November 20, 1962, unless payment due thereon has been made in full prior to April 11, 1968;

(C) dwellings provided in whole or in part by loans insured, guaranteed, or otherwise secured by the credit of the Federal Government, under agreements entered into after November 20, 1962, unless payment thereon has been made in full prior to April 11, 1968: *Provided*, That nothing contained in subparagraphs (B) and (C) of this subsection shall be applicable to dwellings solely by virtue of the fact that they are subject to mortgages held by an FDIC or FSLIC institution; and

(D) dwellings provided by the development or the redevelopment of real property purchased, rented, or otherwise obtained from a State or local public agency receiving Federal financial assistance for slum clearance or urban renewal with respect to such real property under loan or grant contracts entered into after November 20, 1962.

(2) After December 31, 1968, to all dwellings covered by paragraph (1) and to all other dwellings except as exempted by subsection (b) of this section.

**Exemptions**

(b) Nothing in section 3604 of this title (other than subsection (c)) shall apply to—

(1) any single-family house sold or rented by an owner: *Provided*, That such private individual owner does not own more than three such single-family houses at any one time: *Provided further*, That in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period: *Provided further*, That such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time: *Provided further*, That after December 31, 1969, the sale or rental of any such single-family house shall be excepted from the application of this subchapter only if such house is sold or rented (A) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person and (B) without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of section 3604(c) of this title; but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title, or

(2) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

Same; business of selling or renting dwellings defined

(c) For the purposes of subsection (b) of this section, a person shall be deemed to be in the business of selling or renting dwellings if—

(1) he has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or

(2) he has, within the preceding twelve months, participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or

(3) he is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

Pub.L. 90-284, Title VIII, § 803, Apr. 11, 1968, 82 Stat. 82

§ 3604. Discrimination in the sale or rental of housing

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that

indicates any preferences, limitation, or discrimination based on race, color, religion, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, or national origin.

Pub.L. 90-284, Title VIII, § 804, Apr. 11, 1968, 82 Stat. 83.

§ 3605. Discrimination in the financing of housing

After December 31, 1968, it shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, or national origin of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given: *Provided*, That nothing contained in this section shall impair the scope

or effectiveness of the exception contained in section 3603(b) of this title.

Pub.L. 90-284, Title VIII, § 805, Apr. 11, 1968, 82 Stat. 83.

**§ 3606. Discrimination in the provision of brokerage services**

After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, or national origin.

Pub.L. 90-284, Title VIII, § 806, Apr. 11, 1968, 82 Stat. 84.

**§ 3607. Religious organization or private club exemption**

Nothing in this subchapter shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this subchapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

Pub.L. 90-284, Title VIII, § 807, Apr. 11, 1968, 82 Stat. 84.

**§ 3608. Administration—Authority and responsibility**

(a) The authority and responsibility for administering this Act shall be in the Secretary of Housing and Urban Development.

Delegation of authority; appointment of hearing  
examiners; location of conciliation meetings;  
administrative review

(b) The Secretary may delegate any of his functions, duties, and powers to employees of the Department of Housing and Urban Development or to boards of such employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under this subchapter. The persons to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Department of Housing and Urban Development in compliance with sections 3105, 3344, 5362, and 7521 of Title 5. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred. The Secretary shall by rule prescribe such rights of appeal from the decisions of his hearing examiners to other hearing examiners or to other officers in the Department, to boards of officers or to himself, as shall be appropriate and in accordance with law.

Cooperation of Secretary and executive departments and  
agencies in administration of housing and urban  
development programs and activities to  
further fair housing purposes

(c) All executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to fur-



ther the purposes of this subchapter and shall cooperate with the Secretary to further such purposes.

### Functions of Secretary

(d) The Secretary of Housing and Urban Development shall—

(1) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States;

(2) publish and disseminate reports, recommendations, and information derived from such studies;

(3) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(4) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices; and

(5) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this subchapter.

Pub.L. 90-284, Title VIII, § 808(a), (c)-(e), Apr. 11, 1968, 82 Stat. 84, 85.

§ 3609. Education and conciliation, conferences and consultations; reports

Immediately after April 11, 1968, the Secretary shall commence such educational and conciliatory activities as in his judgment will further the purposes of this subchapter. He shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this subchapter and his suggested means of



implementing it, and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement. He may pay per diem, travel, and transportation expenses for persons attending such conferences as provided in section 5703 of Title 5. He shall consult with State and local officials and other interested parties to learn the extent, if any, to which housing discrimination exists in their State or locality, and whether and how State or local enforcement programs might be utilized to combat such discrimination in connection with or in place of, the Secretary's enforcement of this subchapter. The Secretary shall issue reports on such conferences and consultations as he deems appropriate.

Pub.L. 90-284, Title VIII, § 809, Apr. 11, 1968 82 Stat. 85.

§ 3610. Enforcement—Person aggrieved; complaint; copy; investigation; informed proceedings; violations of secrecy; penalties

(a) Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a complaint with the Secretary. Complaints shall be in writing and shall contain such information and be in such form as the Secretary requires. Upon receipt of such a complaint the Secretary shall furnish a copy of the same to the person or persons who allegedly committed or are about to commit the alleged discriminatory housing practice. Within thirty days after receiving a complaint, or within thirty days after the expiration of any period of reference under subsection (c) of this section, the Secretary shall investigate the complaint and give notice in writing to the person aggrieved whether he intends to resolve it. If the Secretary decides to resolve the

complaint, he shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under this subchapter without the written consent of the persons concerned. Any employee of the Secretary who shall make public any information in violation of this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned not more than one year.

Complaint; limitations; answer; amendments; verification

(b) A complaint under subsection (a) of this section shall be filed within one hundred and eighty days after the alleged discriminatory housing practice occurred. Complaints shall be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him and with the leave of the Secretary, which shall be granted whenever it would be reasonable and fair to do so, may amend his answer at any time. Both complaints and answer shall be verified.

Notification of State or local agency of violation of State or local fair housing law; commencement of State or local law enforcement proceedings; certification of circumstances requisite for action by Secretary

(c) Wherever a State or local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this subchapter, the Secretary shall notify the appropriate State or local agency of any complaint filed under this subchapter which appears to

constitute a violation of such State or local fair housing law, and the Secretary shall take no further action with respect to such complaint if the appropriate State or local law enforcement official has, within thirty days from the date the alleged offense has been brought to his attention, commenced proceedings in the matter, or having done so, carries forward such proceedings with reasonable promptness. In no event shall the Secretary take further action unless he certifies that in his judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action.

Commencement of civil actions; State or local remedies available; jurisdiction and venue; findings; injunctions; appropriate affirmative orders

(d) If within thirty days after a complaint is filed with the Secretary or within thirty days after expiration of any period of reference under subsection (c) of this section, the Secretary has been unable to obtain voluntary compliance with this subchapter, the person aggrieved may, within thirty days thereafter, commence a civil action in any appropriate United States district court, against the respondent named in the complaint, to enforce the rights granted or protected by this subchapter, insofar as such rights relate to the subject of the complaint: *Provided*, That no such civil action may be brought in any United States district court if the person aggrieved has a judicial remedy under a State or local fair housing law which provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this subchapter. Such actions may be brought without regard to the amount in controversy in any United States district court for the district in which the discriminatory housing practice is alleged

to have occurred or be about to occur or in which the respondent resides or transacts business. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may, subject to the provisions of section 3612 of this title, enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate.

#### Burden of proof

(e) In any proceeding brought pursuant to this section, the burden of proof shall be on the complainant.

#### Trial of action; termination of voluntary compliance efforts

(f) Whenever an action filed by an individual, in either Federal or State court, pursuant to this section or section 3612 of this title, shall come to trial the Secretary shall immediately terminate all efforts to obtain voluntary compliance.

Pub.L. 90-284, Title VIII, § 810, Apr. 11, 1968, 82 Stat. 85.

§ 3611. Evidence—Investigation; access to records, documents, and other evidence; copying; searches and seizures; subpoenas for Secretary; interrogatories; administration of oaths

(a) In conducting an investigation the Secretary shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation: *Provided, however,* That the Secretary first complies with the provisions of the Fourth Amendment relating to unreasonable searches

and seizures. The Secretary may issue subpoenas to compel his access to or the production of such materials, or the appearance of such persons, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in the United States district court for the district in which the investigation is taking place. The Secretary may administer oaths.

#### Subpoenas for respondent

(b) Upon written application to the Secretary, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the Secretary to the same extent and subject to the same limitations as subpoenas issued by the Secretary himself. Subpoenas issued at the request of a respondent shall show on their face the name and address of such respondent and shall state that they were issued at his request.

#### Compensation and mileage fees of witnesses

(c) Witnesses summoned by subpoena of the Secretary shall be entitled to the same witness and mileage fees as are witnesses in proceedings in United States district courts. Fees payable to a witness summoned by a subpoena issued at the request of a respondent shall be paid by him.

#### Revocation or modification of petition for subpoena; good reasons for grant of petition

(d) Within five days after service of a subpoena upon any person, such person may petition the Secretary to revoke or modify the subpoena. The Secretary shall grant the petition if he finds that the subpoena requires appearance or attendance at an unreasonable time or place, that

it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.

#### Enforcement of subpoena

(e) In case of contumacy or refusal to obey a subpoena, the Secretary or other person at whose request it was issued may petition for its enforcement in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

#### Violations; penalties

(f) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if in his power to do so, in obedience to the subpoena or lawful order of the Secretary, shall be fined not more than \$1,000 or imprisoned not more than one year, or both. Any person who, with intent thereby to mislead the Secretary, shall make or cause to be made any false entry or statement of fact in any report, account, record, or other document submitted to the Secretary pursuant to his subpoena or other order, or shall willfully neglect or fail to make or cause to be made full, true, and correct entries in such reports, accounts, records, or other documents, or shall willfully mutilate, alter, or by any other means falsify any documentary evidence, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

#### Attorney General to conduct litigation

(g) The Attorney General shall conduct all litigation in which the Secretary participates as a party or as amicus pursuant to this Act.

Pub.L. 90-284, Title VIII, § 811, Apr. 11, 1968, 82 Stat. 87.

3612. Enforcement by private persons—Civil action; Federal and State jurisdiction; complaint; limitations; continuance pending conciliation efforts; prior bona fide transactions unaffected by court orders

(a) The rights granted by sections 3603, 3604, 3605, and 3606 of this title may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred: *Provided, however,* That the court shall continue such civil case brought pursuant to this section or section 3610(d) of this title from time to time before bringing it to trial if the court believes that the conciliation efforts of the Secretary or a State or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the Secretary or to the local or State agency and which practice forms the basis for the action in court: *And provided, however,* That any sale, encumbrance, or rental consummated prior to the issuance of any court order issued under the authority of this Act, and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of this Act shall not be affected.

Appointment of counsel and commencement of civil actions in Federal or State courts without payment of fees, costs, or security

(b) Upon application by the plaintiff and in such circumstances as the court may deem just, a court of the United States in which a civil action under this section has been



brought may appoint an attorney for the plaintiff and may authorize the commencement of a civil action upon proper showing without the payment of fees, costs, or security. A court of a State or subdivision thereof may do likewise to the extent not inconsistent with the law or procedures of the State or subdivision.

Injunctive relief and damages; limitation;  
court costs; attorney fees

(c) The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual damages and not more than \$1,000 punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff: *Provided*, That the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees.

Pub.L. 90-284, Title VIII, § 812, Apr. 11, 1968, 82 Stat. 88.

§ 3613. Enforcement by the Attorney General; issues of general public importance; civil action; Federal jurisdiction; complaint; preventive relief

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this subchapter, or that any group of persons has been denied any of the rights granted by this subchapter and such denial raises an issue of general public importance, he may bring a civil action in any appropriate United States district court by filing with it a complaint setting forth the facts and requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such pattern

or practice or denial of rights, as he deems necessary to insure the full enjoyment of the rights granted by this subchapter.

Pub.L. 90-284, Title VIII, § 813, Apr. 11, 1968, 82 Stat. 88.

§ 3614. Expedition of proceedings

Any court in which a proceeding is instituted under section 3612 or 3613 of this title shall assign the case for hearing at the earliest practicable date and cause the case to be in every way expedited.

Pub.L. 90-284, Title VIII, § 814, Apr. 11, 1968, 82 Stat. 88.

§ 3615. Effect on State laws

Nothing in this subchapter shall be construed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this subchapter shall be effective, that grants, guarantees, or protects the same rights as are granted by this subchapter; but any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid.

Pub.L. 90-284, Title VIII, § 815, Apr. 11, 1968, 82 Stat. 89.

§ 3616. Cooperation with State and local agencies administering fair housing laws; utilization of services and personnel; reimbursement; written agreements; publication in Federal Register

The Secretary may cooperate with State and local agencies charged with the administration of State and local fair housing laws and, with the consent of such agencies, utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may reimburse such agencies and their employees for services rendered to assist him in carrying out this subchapter. In furtherance

of such cooperative efforts, the Secretary may enter into written agreements with such State or local agencies. All agreements and terminations thereof shall be published in the Federal Register.

Pub.L. 90-284, Title VIII, § 816, Apr. 11, 1968, 82 Stat. 89.

§ 3617. Interference, coercion, or intimidation; enforcement by civil action

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title. This section may be enforced by appropriate civil action.

Pub.L. 90-284, Title VIII, § 817, Apr. 11, 1968, 82 Stat. 89.

§ 3618. Authorization of appropriations

There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this subchapter.

Pub.L. 90-284, Title VIII, § 818, Apr. 11, 1968, 82 Stat. 89.

§ 3619. Separability of provisions

If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, the remainder of the subchapter and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

Pub.L. 90-284, Title VIII, § 819, Apr. 11, 1968, 82 Stat. 89.

C2 CIVIL RIGHTS ACT OF 1866

42 U.S.C. § 1982

§ 1982. Property rights of citizens

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

R.S. § 1978.

*Appendix**Appendix D*

COMPLAINT FOR VIOLATION OF  
 FAIR HOUSING LAWS  
 BURBRIDGE, et al. vs. PARKMERCED  
 CORPORATION, et al  
 NORTHERN DISTRICT OF CALIFORNIA  
 No. C-71-378 [AJZ]

George H. Clyde, Jr.  
 Stephen V. Bomse  
 Margaret D. Brown  
 44 Montgomery Street, Suite 3000  
 San Francisco, California 94104  
 Telephone: 981-5000  
 Attorneys for Plaintiffs

*In the United States District Court  
 for the Northern District of California*

No. C-71-378 ([AJZ])

Charles Burbridge, Ernestine Burbridge,  
 Dolores Ellis, Glordean Brown and  
 John Hensley, individually and on be-  
 half of all persons similarly situated,  
*Plaintiffs,*

vs.

Parkmerced Corporation, a California  
 corporation, and Metropolitan Life In-  
 surance Company, a New York corpo-  
 ration,

*Defendants.*

COMPLAINT FOR VIOLATION OF  
 FAIR HOUSING LAWS  
 FIRST CAUSE OF ACTION

1. This First Cause of Action is maintained pursuant to § 812 of the Civil Rights Act of 1968, 42 U.S.C. § 3612, to obtain redress and affirmative relief from discrimination in housing practices against plaintiffs and all other persons

similarly situated on the basis of race, color, and/or national origin.

2. Representative plaintiffs Charles Burbridge, Ernestine Burbridge, Dolores Ellis, Glordean Brown and John Hensley are Negro citizens of the United States, and residents of the Northern District of California.

3. Each of the persons named as a plaintiff herein has applied for or attempted to apply for and been refused an apartment at Parkmerced because of his or her race, color, religion, and/or national origin, and as a result of the discriminatory policies and practices of defendants hereinafter described. Plaintiffs Burbridge applied or attempted to apply for an apartment within 180 days of the filing of this Complaint. Plaintiffs Ellis and Brown applied or attempted to apply for an apartment prior to said 180-day period (to wit in or about September, 1969, and August, 1970, respectively) but said applications remained on file and said plaintiffs were ready, willing and able to accept an apartment at Parkmerced within the past 180 days. Plaintiff Hensley applied or attempted to apply for an apartment at Parkmerced in or about April, 1968, and remained ready, willing and able at all times from said date to and including December, 1968, to accept an apartment at Parkmerced but was prevented from obtaining such an apartment by the discriminatory practices hereinafter described, which practices have continued without substantial change to and including the date of filing this Complaint. At the time each plaintiff attempted to make an application for an apartment at Parkmerced he was a bona fide potential applicant for such apartment and was interested in residing at Parkmerced.

4. The plaintiffs named herein are representatives of a class, as defined by Rule 23(a) of the Federal Rules of Civil Procedure, and bring this action on behalf of the

entire class, pursuant to said rule. The class consists of all members of minority racial and ethnic groups, including non-whites and persons of Spanish surname, against whom defendants have discriminated, as hereinafter alleged, and includes members of said groups who have applied for apartments at Parkmerced, who have attempted to apply for such apartments, and who have been discouraged from applying for such apartments. The members of the class are hereinafter referred to as "plaintiff class." The class is so numerous that joinder of all members is impracticable. There are questions of law and fact common to the class. The claims of the representative parties are typical of the claims of the class, and the representatives will fairly and adequately protect the interests of the class. Adjudication of the claims of the representative parties would as a practical matter be dispositive of the interests of other members of the class who are not parties to the adjudication and the defendants herein have acted or refused to act on grounds generally applicable to the class, thereby making declaratory, injunctive or other affirmative relief appropriate to the class as a whole.

5. Defendant Parkmerced Corporation is a California corporation with its principal place of business in the City and County of San Francisco, California, at Parkmerced. Parkmerced Corporation maintains offices and transacts business within the Northern District of California.

6. Defendant Metropolitan Life Insurance Company ("Metropolitan") is a New York corporation with its principal place of business in New York, New York. Metropolitan maintains offices and transacts business, among other places, within the Northern District of California.

7. At all times herein mentioned until December 21, 1970, Metropolitan was the owner of and operated a planned residential community located in San Francisco, California,



known as Parkmerced. The Parkmerced community consists of numerous high-rise apartment buildings and garden-apartment complexes, which were constructed by Metropolitan in the 1940's and the early 1950's. Parkmerced contains approximately 3,500 residential units and provides moderate rental housing for approximately 8,000 people.

8. On or about December 18, and December 21, 1970, defendants Metropolitan and Parkmerced Corporation entered into and consummated various transactions relating to the Parkmerced property including the following:

(a) Metropolitan leased the underlying real property at Parkmerced to Parkmerced Corporation for a thirty-year period, with options to renew said lease for three additional periods of fifteen years each. Said lease provides for rental payable to Metropolitan calculated, under some circumstances, on the basis of revenue from the operations at Parkmerced. No option to purchase said underlying real property was granted to Parkmerced Corporation.

(b) Parkmerced Corporation purchased all of the building improvements and personal property at Parkmerced. Payment therefor is to be made in installments, secured by a deed of trust, a security interest in personal property, and an assignment of rents in favor of Metropolitan.

(c) Metropolitan and Parkmerced Corporation made certain further agreements contemplating concerted future action by them with respect to the operation and ownership of Parkmerced.

9. Since December 21, 1970, Parkmerced Corporation has operated Parkmerced without substantial change in the business operations or policies at said development. All or virtually all of the Parkmerced rental office employees of Metropolitan have been retained by Parkmerced Corporation, and plaintiffs are informed and believe that Park-

merced Corporation presently intends to make no substantial change in the operation or policies of Parkmerced.

10. During the negotiations preceding the transactions described in the paragraph 8 above, the principals, officers, directors, agents, and attorneys of Parkmerced Corporation had knowledge of the allegations of racial discrimination contained hereby by virtue of their familiarity with the case of *Trafficante, et al., v. Metropolitan Life Insurance Company*, (No. C-70-1754 [RHS]) filed in the United States District Court for the Northern District of California on August 18, 1970, and by virtue of correspondence directed to Harry H. Helmsley and Helmsley-Spear, Inc., principals of Parkmerced Corporation.

11. During the past 180 days defendants, and each of them, acting individually and in combination and concert with each other, have systematically discriminated against members of minority racial and ethnic groups, in connection with the offer and rental of dwellings at Parkmerced. As of the date hereof, plaintiffs are informed and believe that members of minority racial and ethnic groups comprise less than 1% of the population of Parkmerced. Said discrimination is continuing as of the date hereof and will continue hereafter unless restrained by this Court, as hereinafter prayed.

12. In particularization of the foregoing, and not in limitation thereof, defendants, and each of them, acting individually and in combination and concert with each other, have discriminated and will continue to discriminate against plaintiffs and all other persons similarly situated in the following ways and manners:

(a) by refusing to rent a dwelling after a prospective tenant has made a bona fide offer, by refusing to negotiate with prospective tenants for the rental of, and by otherwise making unavailable or denying dwellings to prospective

tenants, because of race, color, or national origin of said prospective tenants;

(b) by discriminating against persons in the terms, conditions and privileges of rental of dwellings, and in the provision of services or facilities in connection therewith, because of race, color, or national origin of such persons; and

(c) by representing to persons because of the race, color, or national origin of such persons that dwellings are not available for inspection or rental when such dwellings are in fact so available.

13. In maintaining and furthering their respective practices and policies of discrimination against the named plaintiffs and members of the plaintiff class, defendants, and each of them, acting individually and in combination and concert with each other, have done or caused to be done the following acts, among others:

(a) Defendants have persuaded minority group members who are potential and qualified applicants for rental of dwellings at Parkmerced that they are not welcome at Parkmerced, that applications by them for rental of dwellings at Parkmerced will be denied or never acted upon, and that both residents, management and employees will create a hostile atmosphere for such applicants if admitted as tenants at Parkmerced;

(b) Defendants have discouraged minority-group members who are potential and qualified applicants for the rental of dwellings at Parkmerced from making application by making misrepresentations (through direct statements, omissions, and half-truths) concerning the existence and availability of apartments at Parkmerced, the rental rates, the terms and conditions of rental, the qualifications required of applicants, the waiting list procedures, and the length of time required before apartments will become

available. Defendants have further discouraged minority-group members who are potential and qualified applicants by making rude remarks and insinuations, and by otherwise failing to treat minority-group applicants courteously;

(c) Defendants have failed and refused to permit or accept applications to Parkmerced from minority-group persons while accepting such applications from Caucasians.

(d) Defendants have discriminated against minority-group applicants in the method of processing applications for rental of dwellings at Parkmerced by applying different practices and procedures to minority-group applicants than are applied to Caucasians;

(e) Defendants have manipulated the "waiting list" for dwellings within Parkmerced by giving preference to certain persons and classes of persons, and by delaying action upon the applications of other persons or classes of persons, in such a manner as to discriminate against minority-group applicants;

(f) Defendants have set and maintained standards for acceptance to Parkmerced which effectively discriminate against minority applicants, and have applied such standards in an unequal and discriminatory manner so as to prevent the rental of dwellings by minority groups within Parkmerced;

(g) Defendants have discriminated against minority-group members in the terms and conditions of rental at Parkmerced, and in particular, Parkmerced Corporation has adopted a dual-rent structure whereby new tenants are required to pay substantially higher rental than present tenants whose leases have terminated;

(h) Defendants have systematically attempted to discourage minority applicants from continuing their applications by various means, such as by offering them apart-

ments which are substantially more expensive and less desirable than those actually applied for;

(i) Defendants have adopted policies of giving preferential treatment to certain organizations the members of which are virtually all Caucasian, but have failed and refused to give such preferential treatment to members of similar organizations, many of whose members are of minority groups;

(j) Defendants have adopted policies of giving preferential treatment to certain organizations but have failed to give such preference to minority-group members of such organizations.

(k) Defendants have adopted policies in connection with application for apartments, rentals, and transfers at Parkmerced which are racially neutral on their face, but which have the effect of discriminating against members of minority groups, and which are not justified by any business necessity.

14. Each of the practices, policies and acts above alleged has occurred within 180 days from the date hereof and has also occurred for many years prior thereto.

15. The discriminations against individual plaintiffs and the plaintiff class alleged herein constitute continuing violations, which have occurred throughout the periods when individual plaintiffs were willing and able to rent apartments at Parkmerced on the same terms and conditions as are or were made available to Caucasians. Said violations are occurring as of the date hereof, and will continue to occur unless defendants are restrained by Order of this Court.

16. As a direct and proximate result of the unlawful policies, practices and acts above alleged, plaintiffs and the represented class have been injured in each of the following ways and manners, among others:

(a) by being deprived of the right to reside at Parkmerced and being forced to reside at other locations where they have been compelled to pay greater rent or to accept inferior apartments in less desirable neighborhoods with poorer facilities and services;

(b) by suffering embarrassment, humiliation, and emotional distress.

## SECOND CAUSE OF ACTION

17. This Second Cause of Action is maintained under 42 U.S.C. § 1982, which provides:

"All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

18. Plaintiffs hereby incorporate by reference as if set out fully herein paragraphs 2 through 16, inclusive, of their First Cause of Action.

19. By reason of the foregoing acts of discrimination which have occurred and which will continue to occur unless restrained by appropriate Order of this Court, plaintiffs and members of the class have been and will continue to be deprived of their rights to lease property within Parkmerced on terms and conditions co-equal with those offered to and enjoyed by white citizens.

## DAMAGES AND EQUITABLE RELIEF

20. Plaintiffs are informed and believe and thereon allege that apartments at Parkmerced have been rented for less than the fair market value for comparable rental units in the City and County of San Francisco. Plaintiffs are further informed and believe and thereon allege that the difference between the rates charged for apartments



at Parkmerced and the prevailing rate for comparable rental units in the City and County of San Francisco is at least \$50 per month.

21. Except for the discriminatory policies, practices and acts of defendants as above alleged, at least 1,000 apartments at Parkmerced would have been rented to plaintiffs and/or members of the class herein at all times relevant under 42 U.S.C. § 3612 and 42 U.S.C. § 1982, and plaintiffs and the represented class have therefore been damaged by being compelled to pay excessive rents.

22. In addition to the foregoing damages which have been incurred by the class of persons represented herein, plaintiffs are informed and believe and thereon allege that defendants have knowingly, willfully, and maliciously deprived plaintiffs and the class of rights provided to them under Title VIII of the 1968 Civil Rights Act and 42 U.S.C. § 1982. This is therefore a proper case for the award of punitive and exemplary damages against defendants, and plaintiffs pray for such damages in the amount of \$1,000 for each plaintiff and class member herein for such other sum as may be deemed proper and just in the circumstances, but not less than \$1,000,000. Said damages should be awarded to plaintiffs and to the class and should be applied in the form of rent subsidies and/or economic incentives for the benefit of members of the class in connection with an appropriate plan of affirmative action as hereinafter prayed.

23. Plaintiffs further pray that this Court enter its Order enjoining and restraining defendants and each of them from discriminating against plaintiffs and/or the class in the offer or rental of dwellings at Parkmerced and requiring said defendants, and each of them, to take all affirmative action which is necessary to correct the effects of prior discrimination.

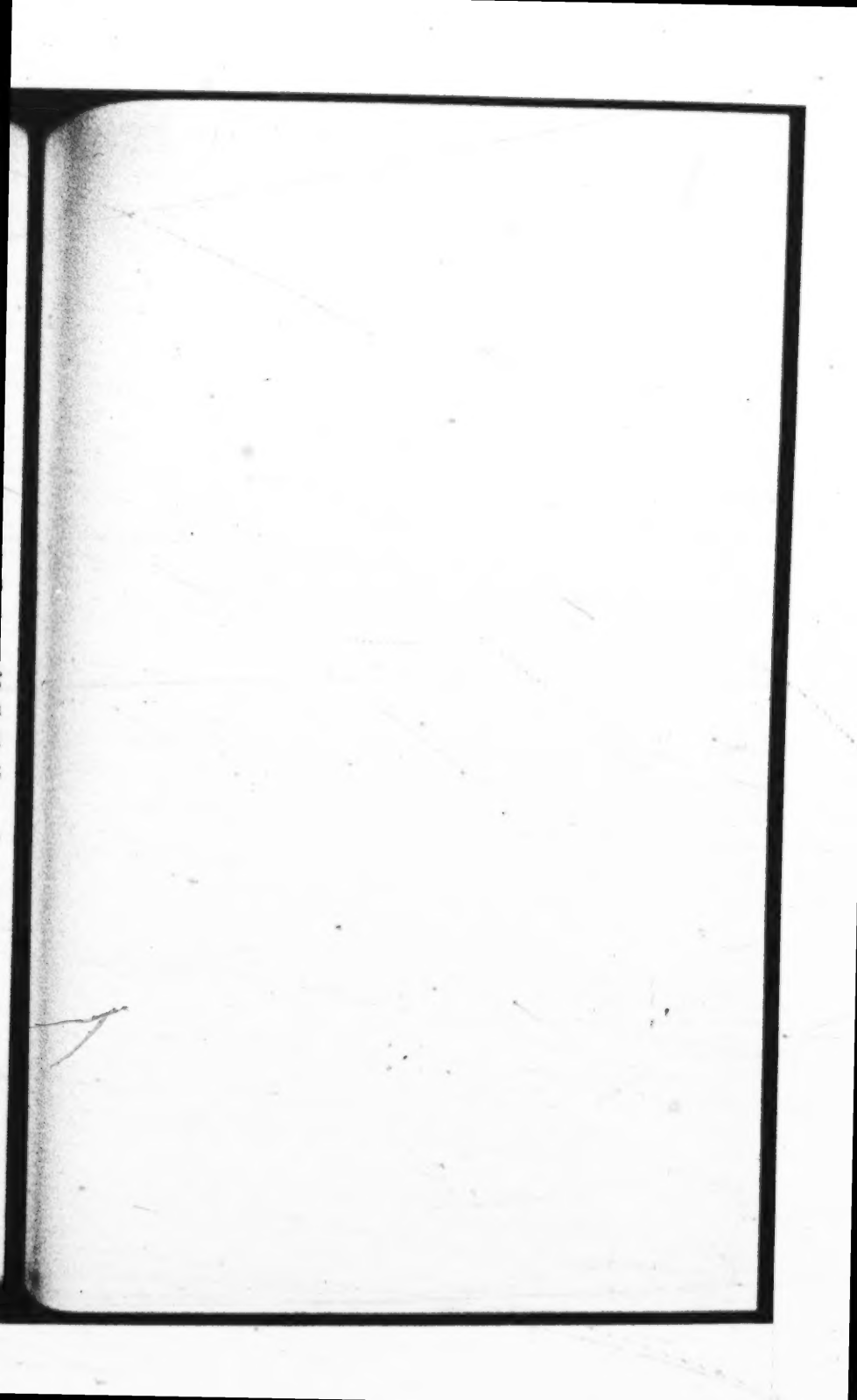


Wherefore plaintiffs pray judgment as follows:

1. That the Court enter its Order declaring that these proceedings are, and may be maintained as, a class action;
2. That the Court find, adjudge and decree that defendants, and each of them, have discriminated against plaintiffs and members of the class on the basis of their race, religion and/or national origin in connection with the offer or rental of apartments at Parkmerced;
3. That the Court award plaintiffs and members of the class compensatory damages according to their proof at trial and punitive damages as may be just and proper;
4. That the Court order defendants to offer to plaintiffs and other members of the class dwellings on the same terms and conditions as dwellings were offered to white persons at the time of discrimination by defendants against plaintiffs and members of the class;
5. That the Court enjoin defendants from discriminating against plaintiffs and members of the class in connection with the offer or rental of dwellings at Parkmerced and require defendants to take all action necessary to correct the effects of prior discrimination;
6. That plaintiffs be awarded their costs of suit and a reasonable attorneys fee, as provided by law; and
7. For such other and further relief as to this Court may appear proper.

Dated February 25, 1971.

George H. Clyde, Jr.  
Stephen V. Bomse  
Margaret D. Brown





**In the Supreme Court of the  
United States**

OCTOBER TERM, 1971

**No. 71-708**

Supreme Court, U. S.  
**FILED**

**JUL 17 1972**

**MICHAEL RODAK, JR., CLERK**

PAUL J. TRAFFICANTE, DOROTHY M. CARR, COMMITTEE  
OF PARKMERCED RESIDENTS COMMITTED TO OPEN  
OCCUPANCY, an unincorporated association; THE  
REVEREND ARTHUR H. NEWBERG, JAMES EMBREE,  
ALBERT JAMES HEICK, and JAQUELINE TCHAKALIAN,  
*Petitioners,*

vs.

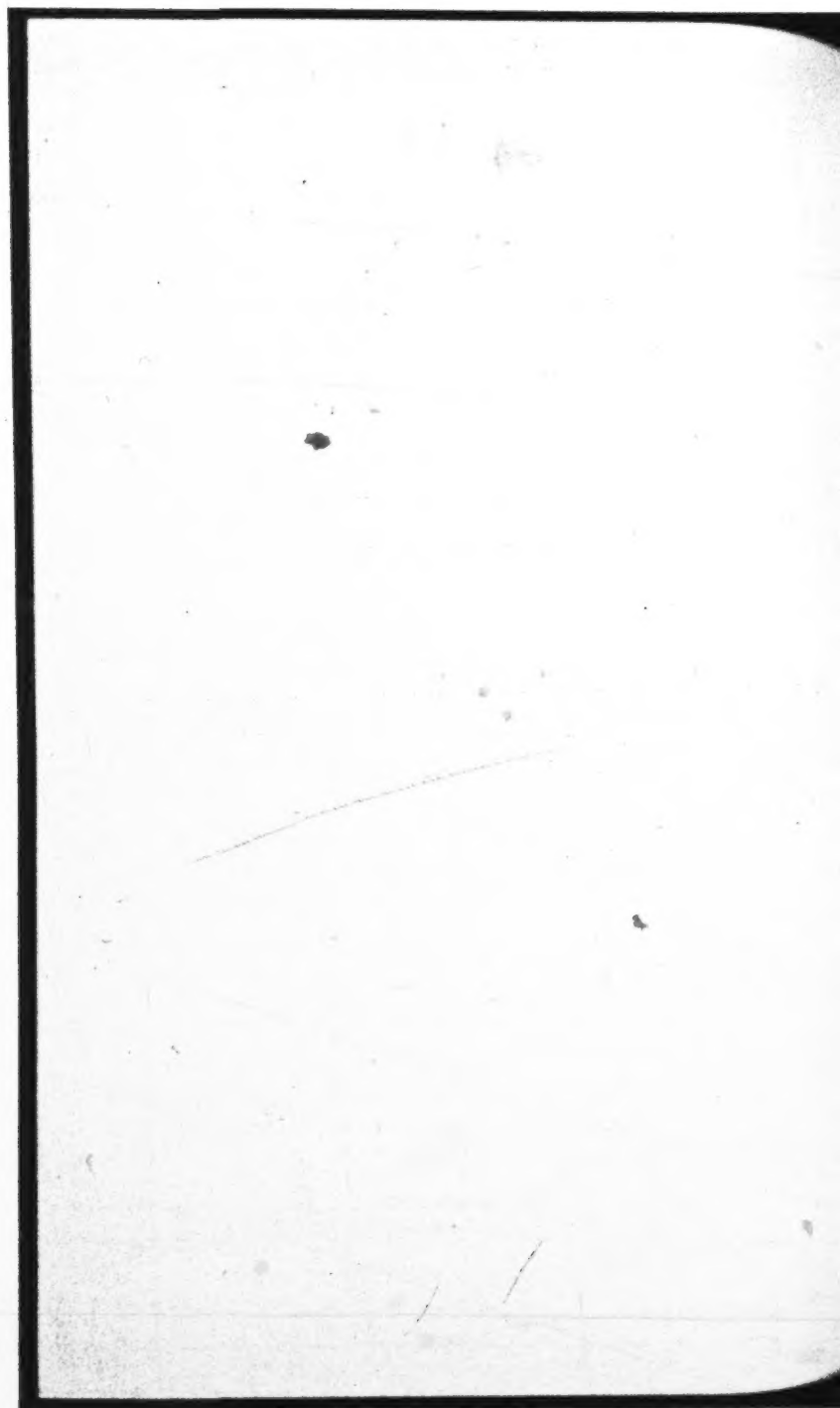
METROPOLITAN LIFE INSURANCE COMPANY, a New York  
Corporation, and PARKMERCED CORPORATION,  
a California Corporation,  
*Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE NINTH CIRCUIT

**Brief of Respondent  
Metropolitan Life Insurance Company**

**JOHN H. RIORDAN  
RICHARD J. KILMARTIN  
KNIGHT, BOLAND & RIORDAN  
465 California Street  
San Francisco CA. 94104  
Telephone: (415) 362-0684**

*Attorneys for  
Respondent  
Metropolitan Life  
Insurance Company*



## SUBJECT INDEX

	Page
Opinions Below .....	1
Jurisdiction .....	1
Questions Presented .....	2
Statutes Involved .....	2
Statement .....	2
Summary of Argument .....	5
Argument .....	6
I Tenants Who Have Not Been the Direct Vic-	
tims of Any Act Proscribed by the Relevant	
Statutes Lack Standing to Challenge Alleged	
Acts of Discrimination by Their Landlord	
Against Others .....	6
A. The Concept of Standing in This Case .....	6
B. The Injuries Alleged and the Interests	
Asserted Are Not Within the Zone of In-	
terests Protected by the Fair Housing Act .....	9
C. Petitioners Lack Standing Under 42 U.S.C.	
§ 1982 .....	15
D. Petitioner Committee of Parkmerced Resi-	
dents Committed to Open Occupancy Has	
Not Alleged Any Injury to Itself .....	16
E. The Cases Relied Upon by Petitioners Do	
Not Support Their Claims to Standing .....	18
F. Administrative Interpretation of Title	
VIII .....	20
G. There Is No Need to Grant Third Parties	
Standing to Implement National Policy ....	21

	Page
II Jurisdiction .....	24
A. The Federal Court Does Not Have Subject Matter Jurisdiction Over the Claims As- serted Under the Fair Housing Act .....	24
1. Claims Under § 3610 .....	24
2. Claims Under § 3612 .....	28
B. Under the Circumstances of This Case the Federal Court Should Abstain from Exer- cising Jurisdiction of the Claims Under § 1982 .....	30
III The Case Is Moot as to Metropolitan .....	31
Conclusion .....	33
Appendices	



# TABLE OF AUTHORITIES CITED

## CASES

	Pages
Adickes v. Kress & Co., 398 U.S. 144 (1970) .....	18, 19
Alameda Conservation Association, et al. v. State of California, et al., 437 F.2d 1087 (Ca. 9) cert. den. 402 U.S. 928 .....	32
Alejandrino v. Quezon, 271 U.S. 528 (1926) .....	32
Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150 (1970) .....	6, 7, 8
Bailey v. Patterson, 369 U.S. 31 (1962) .....	18, 19
Baker v. Carr, 369 U.S. 186 (1962) .....	22
Barlow v. Collins, 397 U.S. 159 (1970) .....	7
Barrows v. Jackson, 346 U.S. 249 (1953) .....	18, 19, 21
Brown v. Ballas, 331 F.Supp. 1033 (D.C. Tex. 1971) .....	12, 23
Brown v. Lo Duca, 307 F.Supp. 102 .....	30
Carr v. Conoco Plastics, Inc., 423 F.2d 57 (CA 5, 1970) .....	19
Carter v. Greene County, 396 U.S. 320 (1970) .....	18
Colon v. Tompkins Square Neighbors, Inc., 289 F. Supp. 104 (S.D. N.Y.) .....	27, 29, 30
Flast v. Cohen, 392 U.S. 83 (1968) .....	7, 8, 9, 22
Golden v. Zwickler, 394 U.S. 103 (1969) .....	32
Griffin v. Breckenridge, 403 U.S. 88 .....	16
Hackett v. McGuire Bros., Inc., 445 F.2d 442 (C.A. 3 1971) .....	19
Hunter v. Erickson, 393 U.S. 385 (1969) .....	30
Hurd v. Hodge, 334 U.S. 24 (1947) .....	16
Johnson v. Decker, 333 F.Supp. 88 (D.C. Ca.) .....	29, 30
Jones v. Mayer Co., 392 U.S. 409 (1968) .....	15, 16, 24, 30
Kennedy Park Homes Association, Inc. v. City of Lackawanna, 318 F.Supp. 669 (1970) aff'd 436 F.2d 108 (C.A. 2 1970) .....	19

	Pages
Lee v. Nyquist, 318 F.Supp. 710 (W.D. N.Y. 1970) aff'd 402 U.S. 935 (1971) .....	20
Marable v. Alabama Mental Health Board, 297 F. Supp. 291 (N.D. Ala. 1969) .....	18, 19
McKee & Co. v. First National Bank of San Diego, 397 F.2d 248 (Ca 9) .....	32
Miller v. Amusement Enterprises, Inc., 426 F.2d 534 (C.A. 5 1970) .....	19
N.A.A.C.P. v. Button, 371 U.S. 415 .....	18
Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400 (1968) .....	19
Office of Communication of United Church of Christ v. FCC, 359 F.2d 994 (C.A. D.C. 1966) .....	19
Powell v. McCormack, 395 U.S. 486 (1969) .....	32
Reitman v. Mulkey, 387 U.S. 369 .....	26
Scenic Hudson Preservation Conference v. FPC, 354 F.2d 608 (C.A. 2 1965) .....	19
Shannon v. HUD, 436 F.2d 809 (C.A. 3 1970) .....	19
Shelley v. Kraemer, 334 U.S. 1 (1947) .....	19
Sierra Club v. Morton, 92 S.Ct. 1361 (1972) .....	7, 8, 14, 17 18, 19, 22
Skidmore v. Swift, 323 U.S. 134 (1944) .....	20
Sullivan v. Little Hunting Park, 396 U.S. 229 (1969) .....	18, 19
Textile Workers Union v. Lincoln Mills, 353 U.S. 448 (1957) .....	32
United States of America v. Alaska Steamship Com- pany, 253 U.S. 113 (1920) .....	31
United States of America v. W. T. Grant Company, 345 U.S. 629 (1953) .....	31, 32

## TABLE OF AUTHORITIES CITED

v

## Pages

United States v. Concentrated Phosphate Export Association, Inc., 393 U.S. 199 (1968) .....	31
---	----

Vargas v. Hampson, 57 C.2d 479; 20 Cal. Rptr. 618; 370 P.2d 322 .....	26
---	----

Walker v. Pointer, 304 F.Supp. 56 (W.D. Tex. 1969) ..	18
---	----

## STATUTES

28 U.S.C. § 1254(1) .....	1
---------------------------	---

## 42 U.S.C.:

§ 1982 .....	2, 3, 4, 5, 6, 15, 16, 21, 30
§ 3601 .....	24, 25
§ 3601 et seq. ....	2
§ 3604(a), (b) and (d) .....	11
§§ 3604, 3605, 3606 .....	25
§ 3608, 3611 .....	11
§ 3610 .....	24, 25
§ 3610(a) .....	11, 25
§ 3610(d) .....	2, 6, 11, 25, 26, 27, 28, 29, 30
§ 3610 and 3612 .....	3, 4, 11, 12, 28, 30
§ 3612 .....	11, 12, 25, 28
§ 3613 .....	11

California Civil Code, §§ 51 and 52 .....	2, 26
---	-------

## California Health and Safety Code:

§ 35700, et seq. ....	6, 25
§ 35720 .....	25
§ 35731 .....	25, 26
§ 35732 .....	25
§ 35734 .....	25
§ 35738 .....	25
§§ 35730 and 35738 .....	26
§§ 35734, 35738 .....	25

Government Code § 11523 .....	26
-------------------------------	----

Labor Code § 1428 .....	26
-------------------------	----

## TABLE OF AUTHORITIES CITED

OTHERS		Page
82 Harvard Law Review 834 .....		28
114 Cong. Rec.:		
4987 .....		27
5514 .....		12
5515 .....		13
9560 .....		14
9600 .....		13
9612 .....		29

# In the Supreme Court of the United States

OCTOBER TERM, 1971

---

No. 71-708

---

PAUL J. TRAFFICANTE, DOROTHY M. CARR, COMMITTEE  
OF PARKMERCED RESIDENTS COMMITTED TO OPEN  
OCCUPANCY, an unincorporated association; THE  
REVEREND ARTHUR H. NEWBERG, JAMES EMBREE,  
ALBERT JAMES HEICK, and JAQUELINE TCHAKALIAN,  
*Petitioners,*

vs.

METROPOLITAN LIFE INSURANCE COMPANY, a New York  
Corporation, and PARKMERCED CORPORATION,  
a California Corporation,  
*Respondents.*

---

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE NINTH CIRCUIT

**Brief of Respondent**  
**Metropolitan Life Insurance Company**

---

## OPINIONS BELOW

The opinion of the District Court for the Northern District of California (Appendix A hereto) dismissing the Complaint and Complaint in Intervention is reported at 322 F.Supp. 352 (N.D. Cal. 1971). The opinion of the Court of Appeals for the Ninth Circuit (Appendix A of Petitioner's Brief) affirming the Judgment of Dismissal is reported at 446 F.2d 1158.

## JURISDICTION

The Judgment of the Court of Appeals for the Ninth Circuit was entered on August 6, 1971. On September 13, 1971, the Court of Appeals denied a timely petition for rehearing *en banc*. A copy of the Order is attached hereto as Appendix B. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## QUESTIONS PRESENTED

1. Do tenants of an apartment complex against whom no act of discrimination has been practiced and none of whom have been deprived of the right to rent or lease real property have standing under the Fair Housing Act (Title VIII of the Civil Rights Act of 1968; P.L. 90-284, 42 U.S.C. § 3601 et seq.) or 42 U.S.C. § 1982 to maintain an action against their former or present landlord for alleged acts of discrimination against others?

2. Does the Federal court lack subject matter jurisdiction of Petitioner's claims under the Fair Housing Act by reason of 42 U.S.C. § 3610(d)?

3. Is the case moot as to respondent Metropolitan Life Insurance Company ("Metropolitan") by reason of its sale of Parkmerced?

## STATUTES INVOLVED

The statutes involved are:

1. Title VIII (Fair Housing) of the Civil Rights Act of 1968 (P.L. 90-284; 42 U.S.C. § 3601 et seq.)
2. 42 U.S.C. § 1982.
3. California Health and Safety Code §§ 35700, 35720, 35731, 35732, 35734, and 35748.
4. California Civil Code §§ 51 and 52.

These statutes are set forth in Appendix C hereto.

## STATEMENT

This action arises under the Fair Housing Act (Title VIII of the Civil Rights Act of 1968) and 42 U.S.C. § 1982. Parkmerced is a 3500 unit garden and tower apartment complex located on approximately 150 acres in the southwest portion of San Francisco. It is immediately contiguous to or near hundreds of privately owned single family residences, San Francisco State College, other unrelated

apartment complexes and several shopping areas. Commenced in the early 1940's and completed in the early 1950's, it was entirely constructed with private capital by Metropolitan which owned and operated it until December 31, 1970.<sup>1</sup> On that date Metropolitan sold the buildings and leased the land for a period of 30 years, with three 15-year renewal options, to Parkmerced Corporation in a bona fide, arm's-length business transaction. Metropolitan has no ownership interest whatever in Parkmerced Corporation and from and after the date of sale was divested of all right to manage, control or otherwise operate the project including the rental of apartment units. It has had no employees engaged in Parkmerced's operations since the sale (R. Ex. K).

At the time of the commencement of this action, each petitioner was a resident and tenant at Parkmerced.<sup>2</sup> Since the Order attacked by petitioners is an Order dismissing the Complaint and Complaint in Intervention, the facts under review are the allegations of the complaints.<sup>3</sup> The Complaint contains three causes of action, the first and second being based upon §§ 3610 and 3612, respectively, of the Fair Housing Act, and the third upon 42 U.S.C. § 1982.

1. Parkmerced was one of seven projects built and financed by Metropolitan for the purpose of providing middle income housing in park-like settings in urban areas. The others were Parkchester in the Bronx; Riverton in Harlem; Stuyvesant Town and Peter Cooper Village in Mid-Manhattan; Park Fairfax in Alexandria; and Parklabrea in Los Angeles.

2. Except the Committee of Parkmerced Residents Committed to Open Occupancy. The Committee is alleged to be an unincorporated association, all of the members of which are residents of Parkmerced. The number or identity of members of the Committee is not disclosed by the record. Since the commencement of the action, all of the individual plaintiffs in intervention have moved from Parkmerced, and petitioner Carr has publicly announced her intention to do so.

3. The Affidavit of Alvin F. Poussaint (R. Ex. I) is not part of the complaints. It was filed in the District Court by petitioners in opposition to Respondents' Motions to Dismiss.



Each cause of action alleges that petitioner Trafficante is a Caucasian and petitioner Carr a Negro; that both are tenants of and reside at Parkmerced; *upon information and belief only*, that Metropolitan has "for many years" prior to the filing of the complaint discriminated against minority groups in rental practices; and that prior to the commencement of the action the petitioners filed complaints with the Secretary of Housing and Urban Development ("H.U.D."), pursuant to the provisions of 42 U.S.C. § 3610, which were not resolved. The Complaint in Intervention is virtually identical to the causes of action of the Complaint based upon 42 U.S.C. § 3612 and 42 U.S.C. § 1982. All petitioners assert that by reason of the alleged discrimination they have been deprived of certain social, business and professional benefits.

Neither the Complaint nor the Complaint in Intervention contain any allegation that the petitioners, or any of them, have themselves been deprived of housing or any right guaranteed them by the Fair Housing Act or 42 U.S.C. § 1982. The complaints are also devoid of any allegation that respondents have denied or interfered with the free access to Parkmerced of any person seeking business or social contact with plaintiffs; or interfered with plaintiffs' business or social activities with any person; or curtailed any service to plaintiffs because of their activities, guests, or business invitees; or otherwise interfered with plaintiffs' right of free inter-racial association.

Upon motion of Respondents<sup>4</sup> the District Court, on February 10, 1971, dismissed the action upon the ground that petitioners were not persons aggrieved under the relevant statutes and were without standing to maintain the action.

---

4. Immediately after the sale of Parkmerced the purchaser, Parkmerced Corporation, was joined as a defendant in the action.

On February 25, 1971, petitioners' attorneys filed a Complaint entitled Charles Burbridge (et al.) vs. Parkmerced Corporation and Metropolitan Life Insurance Company (U.S.D.C. N.D. California No. 71 378), a copy of which is Appendix D hereto. That case is now pending. The defendants have answered, and discovery procedures are being pursued. The plaintiffs, all Negroes, allege that they are the direct victims of discriminatory housing practices which resulted in their exclusion from Parkmerced and accordingly their standing to maintain the action has not been challenged. Reference to *Burbridge* will be made further in this brief.<sup>5</sup>

The Court of Appeals for the Ninth Circuit unanimously affirmed the District Court noting, as had the District Court, that the plaintiffs had not alleged, "nor can they that they themselves have been denied any of the rights granted by Title VIII or by 42 U.S.C. § 1982 to purchase or rent real property." Both Courts held squarely that the "interests" and "injuries" alleged in the Complaint were not the interests and injuries contemplated by the Fair Housing Act or § 1982 and concluded that petitioners were without standing to maintain the action. Neither Court reached the jurisdictional or mootness question.

### SUMMARY OF ARGUMENT

Respondents contend that the purpose of the Fair Housing Act was to make housing available to all persons without discrimination based on race, color, religion or national origin. To effect that policy and purpose, Congress specifically defined acts which it declared to be unlawful and provided a comprehensive scheme of remedies to any person who had been denied housing in violation of the Act.

5. *infra* p. 22

The Act does not contemplate this type of action or provide redress for the "injuries" asserted. Petitioners are not the intended beneficiaries of the Act.

Similarly, petitioners are not within the class of persons afforded protection by 42 U.S.C. § 1982 since they have not been denied the right to lease property.

In addition to petitioners' lack of standing, the Federal Court lacked subject matter jurisdiction of the claims predicated on the Fair Housing Act by virtue of 42 U.S.C. § 3610(d) which prohibits federal jurisdiction if a State or local fair housing law provides substantially equivalent rights and remedies as the Fair Housing Act and contains a judicial remedy. California's Rumford Act<sup>6</sup> and Unruh Civil Rights Act<sup>7</sup> provide such rights and remedies.

Finally, the case is moot as to respondent Metropolitan by reason of its sale of Parkmerced. Metropolitan no longer controls any aspect of the operation at Parkmerced and it would be idle for a court to enter an injunction against it. The damage claims asserted do not save the case from the doctrine of mootness because they are not cognizable under the statutes involved.

## ARGUMENT

### I

#### **TENANTS WHO HAVE NOT BEEN THE DIRECT VICTIMS OF ANY ACT PROSCRIBED BY THE RELEVANT STATUTES LACK STANDING TO CHALLENGE ALLEGED ACTS OF DISCRIMINATION BY THEIR LANDLORD AGAINST OTHERS**

##### **A. The Concept of Standing in this Case.**

The cases involving the issue of standing are legion, but the final formula for standing in this case may be extracted from *Association of Data Processing Service Organizations*,

6. Cal. Health & Safety Code §35700, et seq.

7. Cal. Civ. Code §51, et seq.

*Inc. v. Camp*, 397 U.S. 150 (1970); *Barlow v. Collins*, 397 U.S. 159 (1970); *Sierra Club v. Morton*, 92 S.Ct. 1361 (1972); and *Flast v. Cohen*, 392 U.S. 83 (1968). In *Data Processing* and *Barlow* this Court granted standing to obtain judicial review of governmental agency action where the petitioners themselves had suffered direct economic injury and were clearly persons aggrieved within the meaning of the Administrative Procedure Act. In *Data Processing* it was held (pp. 151, 153):

"Generalizations about standing to sue are largely worthless as such. One generalization is, however, necessary and that is that the question of standing in the federal courts is to be considered in the framework of Article III which restricts judicial power to 'cases' and 'controversies.'

. . . . .

" . . . [The question of standing] concerns, apart from the 'case' or 'controversy' test, the question whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. Thus the Administrative Procedure Act grants standing to a person 'aggrieved by agency action within the meaning of a relevant statute.'"

and (p. 154):

"Apart from Article III jurisdictional questions, problems of standing, as resolved by this Court, have involved a 'rule of self-restraint for its own governance.' *Barrows v. Jackson*, 346 US 249. Congress can, of course, resolve the question one way or another, save as the requirements of Article III dictate otherwise. *Muskraat v. United States*, 219 US 346."

Subsequently, in *Sierra Club* this Court affirmed that the "injury in fact" element necessary to satisfy Article III requirements for standing could be of a noneconomic na-

ture provided the party seeking review had himself suffered an injury to a "cognizable interest" (p. 1366) and had a "*direct* stake in the outcome" (p. 1369; emphasis added). The Court however denied standing to purely "special interest" organizations which had not alleged cognizable injury to itself, and observed (p. 1368):

"The requirement that a party seeking review must allege facts showing that he is himself adversely affected does not \* \* \* prevent any public interests from being protected through the judicial process. It does serve as at least a rough attempt to put the decision as to whether review will be sought in the hands of those who have a *direct* stake in the outcome. That goal would be undermined were we to construe the relevant statute to authorize judicial review at the behest of organizations or individuals who seek to do no more than vindicate their own value preferences through the judicial process." (Emphasis added)

In *Flast* the Court had previously summarized (pp. 99, 100):

"In other words, when standing is placed in issue in a case, the question is whether the person whose standing is challenged is a proper party to resquest an adjudication of a particular issue and not whether the issue itself is justiciable."

Under those holdings it is not sufficient that petitioners advance merely any injury or interest but they must assert an injury which is "cognizable" (*Sierra Club* at 1366) and "arguably within the zone of interests to be protected or regulated by the statute" (*Data Processing* at 153). Petitioners satisfy neither requirement but respondent believes that in the context of this case the "injury in fact" element necessary to satisfy Article III 'case' or 'controversy' requirements and the "zone of interests" test are so inseparably interwoven that an attempt to dissect and treat them separately or independently would be an exercise in

utility. Thus, if petitioners have not alleged an injury cognizable under the relevant statutes they are not within the zone of interests sought to be protected by the statutes. Conversely, if they are not within the zone of interests to be protected by the statutes they have not suffered a cognizable injury.<sup>8</sup>

**I. The Injuries Alleged and the Interests Asserted Are Not Within the Zone of Interests Protected by the Fair Housing Act.**

The petitioners' "injuries" are alleged to be:

"(a) plaintiffs are deprived of the social benefit of living within a community which is not artificially imbalanced in a manner which excludes minority group members;

"(b) plaintiffs suffer the loss of business and professional advantages which accrue from contact and association with minority group members;

"(c) plaintiffs are stigmatized within both the white and minority group communities as residents of a segregated 'white ghetto', causing such residents both embarrassment and economic damage in social, business and professional activities." (R. Ex. A at 5 and Ex. B at 5; Pet.App. C at 5.)

An examination of the Fair Housing Act is necessary to determine whether the injuries and interests asserted are within the purview of the statutes involved and whether, consequently, the petitioners have or lack standing. The Act itself defines the rights that it creates and protects, the injuries it prohibits, and persons aggrieved by its violation. In relevant parts it provides:

"§ 3610. (a) Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a dis-

8. Compare this Court's statement in *Flast v. Cohen* (p. 95) that: "Thus, no justiciable controversy is presented when . . . there is no standing to maintain the action."



criminator housing practice that is about to occur (hereafter 'person aggrieved') may file a complaint with the Secretary.

"(d) . . . the person aggrieved may, within thirty days thereafter, commence a civil action in any appropriate United States district court, against the respondent named in the complaint, *to enforce the rights granted or protected by this subchapter*, insofar as such rights relate to the subject of the complaint: . . ."

"§ 3602. As used in this title—

. . . . .

"(f) 'Discriminatory housing practice' means an act that is unlawful under section 3604, . . . ."

"§ 3604. As made applicable by section 3603 and except as exempted by sections 3603(b) and 3607, it shall be unlawful—

"(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, or national origin.

"(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, or national origin.

. . . . .

"(d) To represent to any person because of race, color, religion, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available."

"§ 3612. (a) *The rights granted by sections . . . 3604 . . . may be enforced by civil actions* in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction." (Emphasis added)

Read in context it is clear that petitioners are not and were not intended to be, persons aggrieved within the meaning



of § 3610(a). As tenants and residents of Parkmerced, none of the acts proscribed by § 3604(a), (b) and (d) have been practiced against them, nor have they been deprived of any of the rights specifically defined by § 3604 which could be the subject of enforcement action under § 3610(d) or § 3612.<sup>9</sup> The rights granted by § 3604 which are enforceable under §§ 3610 and 3612 are not the rights asserted by petitioners but the right to obtain housing free of discrimination. This personal right is directly enforceable only by the person to whom given.<sup>10</sup> Many parts of the Fair Housing Act compel this conclusion. For example, a person claiming to have been injured by a discriminatory housing practice may file an administrative complaint with the Secretary (§ 3610(a)); the complaint *must* be filed within 180 days after the specific acts complained of occur (§ 3610(b)); the complaint filed with the Secretary must state the specific facts upon which it is based (§ 3610(b));<sup>11</sup> an action under § 3610(d) must be filed within thirty days after the Secretary is unable to resolve the administrative complaint (§ 3610(d)); an action under § 3612 must be filed within 180 days of the occurrence of the alleged discriminatory housing practice or be barred (§ 3612(a)); and federal administrative assistance is available to persons aggrieved (§§ 3608, 3611). Many parts of the Act, including the specific and exact time limitations for seeking redress, become

9. While the language of § 3612 is arguably narrower than that of § 3610, respondent does not contend that different tests of standing are applicable under the two sections. Rather, the precise wording of § 3612 reinforces the conclusion that in providing enforcement machinery Congress intended to provide remedies only for the direct victims of discriminatory housing practices.

10. In a broader sense the Fair Housing Act is enforceable by the Attorney General under § 3613.

11. Compare the complaint, the charging allegations of which are based upon information and belief only (R. Ex. A at 2, 3; Pet. Br. App. C at 2, 3); and Ex. A and B to Complaint which state no facts whatever.

meaningless if third parties who have not been deprived of any of the rights created by the Act are allowed to maintain an action such as this. § 3610 does not provide for an award of damages (*Brown v. Ballas*, 331 F.Supp. 1033 (D.C. Tex. 1971)) but its injunctive and affirmative action provisions are obviously designed only to obtain housing for persons who have been discriminated against. Similarly, the provisions of § 3612 authorizing an award of damages, costs and attorney's fees clearly contemplate redress of an injury inflicted upon a person who has been wrongfully denied housing.

The congressional history of the Fair Housing Act is replete with indications that Congress intended actions under § 3610 and § 3612 only by the direct victims of a discriminatory act. In a discussion of costs and attorney's fees in the Senate, Senator Hart stated pointedly:

"Mr. President, I think it important to note that Section 212(b) and (c) as those provisions now stand do reveal a clear congressional intent to permit, and even encourage, litigation by those who cannot afford to redress *specific wrongs aimed at them because of the color of their skin*. Of course a court must judge what fees are appropriate, as well as what damages may apply, but this Section should not be read as permitting courts to deny costs solely at its discretion. We cannot prevent unwitting enforcement of this provision to shut the courthouse doors to those *whose rights are violated* simply because they lack the funds to protect *those rights*."<sup>12</sup> (Emphasis added.)

Similarly, the following colloquy occurred in a discussion of § 3612:

Senator Mondale:

"As I understand the intent of the amendment, as modified, offered by the Senator from Colorado [Mr.

12. 114 Cong. Rec. at 5514

Allott] it is this: when a person really wants to rent a particular leasehold or when he wants to buy a particular piece of property, he is clearly within the protection of this measure. But when the offer is in effect a phony one, when he has no intention, when it is not a good safe offer, because he is on a lark or whatever, when it is a contrived sort of situation with which he would never go through, he would not be protected."

Senator Allott:

"I think that bona fide means a man has to be ready, willing and able to perform. Without these three elements it would not be a bona fide offer capable of enforcement if accepted."<sup>13</sup>

Speaking of the Act generally, Representative Corman observed:

"It would assure that anyone who answered an advertisement for housing not be turned away on the basis of his race."<sup>14</sup>

On April 10, 1968, the date the Act was passed in the House of Representatives, Representative Celler commented:

"A person aggrieved files his complaint within 180 days after the alleged acts of discrimination. The Secretary of Housing and Urban Development would have 30 days after filing of the complaint to investigate the matter and give notice to the person aggrieved whether he intended to resolve it. . . . If conciliation failed, or if the Secretary declined to resolve the charge or otherwise did not act within the 30-day period, the aggrieved person would have 30 days in which to file a civil action in either a State or Federal court.

. . . . .

"The bill further provides that any sale, encumbrance, or rental consummated prior to a court order issued

13. 114 Cong. Rec. at 5515.

14. 114 Cong. Rec. at 9600.

under this act and involving a bona fide purchaser, encumbrancer, or tenant, shall not be affected."<sup>15</sup>

These statements are only a few from many expressed in varying contexts. The theme central to all discussions, however, was the dignity of man, his right to housing and equal treatment regardless of the color of his skin, and the guarantee of those rights to *him*. Nowhere did either the Senate or the House express any concern whatever for the enhancement of the business and social activities of any third persons, including tenants. The discussions fail to disclose any intent on the part of Congress to grant standing to sue to any but the direct victims of discriminatory housing practices and the Attorney General.

Similarly, there is no indication whatever in either the Act itself or its congressional history that Congress intended to require private landlords to enter into meaningless and inconclusive injunctive or damage litigation with any tenant who happened to disagree with the landlord's business practices, procedures or social views, nor to subject private landlords to the possible harassment of a multitude of lawsuits which would be binding upon no one. If upon a trial petitioners, who sue in their right alone, were denied the relief they seek, the judgment would not and could not be binding upon the next group of plaintiffs asserting a real or imagined grievance. On the other hand, if any measure of relief was granted by a court the extent of the judgment would not and could not be binding or conclusive upon persons not parties to the action. Hence, any third person<sup>16</sup> being dissatisfied with the result could commence another action to attempt to implement his views or to "vindicate [his] own value preferences" (*Sierra Club*

15. 114 Cong. Rec. at 9560.

16. Parkmerced alone houses over 8000 persons (R. Ex. A at 2).

at 1369). Further, the specter of a person obtaining housing through the administrative or judicial process followed immediately by a claim for damages against his new landlord for injuries allegedly being suffered as a result of living in a segregated community would be an exercise in circuitry devoid of logic and contrary to the ennobling purpose of the statutes. Such profound disorder could not only not have been contemplated by Congress but is totally unnecessary to achieve the purpose of the Act.<sup>17</sup> The injuries and interests asserted are simply not those contemplated by the Fair Housing Act. Petitioners are not therefore persons aggrieved within the meaning of the Act and their noncognizable injuries cannot be made the subject of an action for damages.

**C. Petitioners Lack Standing Under 42 U.S.C. § 1982.**

Petitioners' lack of standing under § 1982 is patent. In concise terms that section provides:

"All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

In interpreting the statute this Court, in *Jones v. Mayer Co.*, 392 U.S. 409 (1968), stated (p. 420):

"We begin with the language of the statute itself. In plain and unambiguous terms, § 1982 grants to all citizens, without regard to race or color, 'the same right' to purchase and lease property 'as is enjoyed by white citizens.'"

Petitioners do not and cannot fall within the purview of that statute. Obviously none has been denied the right to lease real property. Consequently, they have suffered no

17. *Infra* at 28.

"injury in fact" at all, nor can their claims fall "arguably within the zone of interests to be protected . . . by the statute." The entire rationale of *Jones v. Mayer Co.* is inimical to the status petitioners represent and does not remotely purport to grant them standing. In fact, all of the implications of *Jones* are directly to the contrary. Quoting its earlier decision in *Hurd v. Hodge*, 334 U.S. 24 (1947), this Court stated (p. 419):

"Hurd v. Hodge, supra, squarely held, therefore, that a Negro citizen who is denied the opportunity to purchase the home he wants '[s]olely because of [his] race and color,' 334 U.S., at 34, has 'suffered the kind of injury that § 1982 was designed to prevent.'" (Emphasis added.)

The entire thrust of *Jones* was the protection of the rights of Negroes to purchase or lease property. Indeed, the constitutionality of § 1982 was predicated upon its attempt, as authorized by the Thirteenth Amendment, to abolish a "badge of slavery". The kind of injury that § 1982 was designed to prevent is simply not present in this case.<sup>18</sup>

**D. Petitioner Committee of Parkmerced Residents Committed to Open Occupancy Has Not Alleged Any Injury to Itself.**

What has been said heretofore applies with equal force to all petitioners. There is, however, an additional fatal defect in the complaint in intervention filed by the Committee of Parkmerced Residents Committed to Open Occupancy ("Committee").

18. The contention of the United States that to the extent petitioner Carr claims to be a victim of tokenism her complaint is within the terms of § 1982 (Brief of United States, n. 36 at 20) is neither suggested nor supported by *Jones v. Mayer Co.* or *Griffin v. Breckenridge*, 403 U.S. 88 in both of which the plaintiff was the direct victim of a specific offense. Further, the claim of "tokenism" attributed to petitioner Carr does not appear in her complaint.



It is alleged that the Committee is "an unincorporated association of Caucasian and Negro individuals who are residents of Parkmerced committed to correction of the racial imbalance presently existing at Parkmerced" (R. Ex. B at 2). But the only injuries allegedly suffered by the Committee are the same loss of social, business and professional benefits alleged by the individual plaintiffs.<sup>19</sup> In *Sierra Club* this Court held (p. 1366):

"But the 'injury in fact' test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured  
 . . ."

and (p. 1368):

"But a mere 'interest in a problem,' no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization 'adversely affected' or 'aggrieved' within the meaning of the [relevant statute]. The Sierra Club is a large and long-established organization, with an historic commitment to the cause of protecting our Nation's natural heritage from man's depredations. But if a 'special interest' in this subject were enough to entitle the Sierra Club to commence this litigation, there would appear to be no objective basis upon which to disallow a suit by any other bona fide 'special interest' organization, however small or short-lived. And if any group with a bona fide 'special interest' could initiate such litigation, it is difficult to perceive why any individual citizen with the same bona fide special interest would not also be entitled to do so."

The holding in *Sierra Club* was premised upon lack of an allegation of injury to the Sierra Club itself or an individualized injury to any of its members. The Committee in this

19. Supra at 13.



case thus appears to be a "special interest" group formed for the sole purpose of correcting an alleged racial imbalance at Parkmerced. As such, it has not and cannot have suffered the only "injuries" which are alleged. Further, as in *Sierra*, there is no allegation whatever that the individual members of the Committee have suffered any "injury in fact."<sup>20</sup>

**E. The Cases Relied Upon by Petitioners Do Not Support Their Claims to Standing.**

Since Congress has designated the persons entitled to file actions under the Fair Housing Act, it is unnecessary to consider a host of authorities in which standing or lack of standing was determined by nonstatutory standards or the phrase "person aggrieved" was not defined. Similarly, the clear lack of any cognizable injury to or interest in petitioners makes it unnecessary to consider what injury or interest would qualify to grant standing under § 1982. But it should not go unsaid that the cases principally relied upon by petitioners do not grant or purport to grant standing to them. In each such case the plaintiff was clearly the person directly aggrieved and had a cognizable interest in the subject matter of the action.

Thus, in *Sullivan v. Little Hunting Park*, 396 U.S. 229 (1969), *Barrows v. Jackson*, 346 U.S. 249 (1953), *Carter v. Greene County*, 396 U.S. 320 (1970), *Bailey v. Patterson*, 369 U.S. 31 (1962), *Adickes v. Kress & Co.*, 398 U.S. 144 (1970), *Marable v. Alabama Mental Health Board*, 297 F.Supp. 291 (N.D. Ala. 1969) and *Walker v. Pointer*, 304 F.Supp. 56 (W.D. Tex. 1969), the plaintiff was the person against whom an act of discrimination had been directly

20. The Committee's status is unlike that of the petitioner in *N.A.A.C.P. v. Button*, 371 U.S. 415, wherein the Court granted standing to a corporation which had alleged direct injuries to itself, its purpose and its functions, as well as injury to its members.

practiced. In *Sullivan* the plaintiff himself had been expelled from a corporation because he had leased his residence to a Nero and accordingly was granted standing to maintain an action for damages to himself. In *Barrows* the defendant was accorded the right to assert the doctrine of *Shelley v. Kremer*, 334 U.S. 1 (1947) on his own behalf as a defense to an action for damages against him. (The Court there reiterated the rule that one may not claim standing to vindicate the rights of another but held that the contemplated action of a State Court could result in a denial to the defendant of his own constitutional rights.) In *Carter* the plaintiffs had been unlawfully excluded from jury service. The petitioners themselves in *Bailey* had been denied nonsegregated treatment, while in *Adickes* the plaintiff had been refused service in the defendant's restaurant facilities and had been arrested upon her departure from the defendant's store. The plaintiffs in *Marable* were the direct victims of the practices complained of and in *Walker* were the persons actually evicted from rented property in violation of their own rights.

Similarly, in *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400 (1968), *Miller v. Amusement Enterprises, Inc.*, 426 F.2d 534 (C.A. 5 1970), *Hackett v. McGuire Bros., Inc.*, 445 F.2d 442 (C.A. 3 1971) and *Carr v. Conoco Plastics, Inc.*, 423 F.2d 57 (CA 5, 1970) the plaintiff was the person against whom an act of discrimination had been directly practiced and the action was authorized by a specific statute.

Finally, this case does not present any challenge to governmental administrative agency action as in *Scenic Hudson Preservation Conference v. FPC*, 354 F.2d 608 (CA 2 1965), *Shannon v. HUD*, 436 F.2d 809 (C.A. 3 1970), *Kenedy Park Homes Association, Inc. v. City of Lackawanna*, 318 F.Supp. 669 (1970) aff'd 436 F.2d 108 (C.A. 2 1970), *Office of Communication of United Church of Christ*

*v. FCC*, 359 F.2d 994 (C.A. D.C. 1966), and *Lee v. Nyquist*, 318 F.Supp. 710 (W.D. N.Y. 1970), aff'd 402 U.S. 935 (1971).

In each of those cases the plaintiff, who was the person directly aggrieved, was granted standing to challenge administrative action of a government agency in order to assure its regularity and compliance with the Constitution or pertinent statutes or regulations.

None of the cases cited by petitioners, including Civil Rights cases, grant standing to sue to any except the direct victims of the discriminatory practice complained of and they are not therefore germane to the issue of standing in this case.

#### **F. Administrative Interpretation of Title VIII.**

Respondent acknowledges that an administrative interpretation of an Act by an agency charged with its enforcement is entitled to consideration. The consideration, however, is subject to the limitation imposed by this Court in *Skidmore v. Swift*, 323 U.S. 134 (1944), that (p. 140):

"The weight of [an administrative determination] in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which gave it power to persuade if lacking power to control."

In this case, the "determination" by an employee of H.U.D. that petitioners have standing (Pet. Br. at 21) is entitled to no weight at all. This gratuitous unarticulated conclusion, which is directly contrary to that of the District Court and the Ninth Circuit Court of Appeals, made only in a letter to petitioners' attorneys while the case was pending in District Court cannot even be deemed a semi-official declaration of the Department.

The desire of the Department of Justice for assistance, upon which its interpretation of the statutes appears primarily based, is understandable, but denial of standing to petitioners will in no way detract from the assistance legitimately available to it. Respondent asks only that any action filed against it be brought and prosecuted by a proper plaintiff with a cognizable grievance in a proceeding that will terminate on a final and conclusive note. Neither the need for assistance nor the size of the Department's Civil Rights staff can confer or create standing where none exists. The "private Attorney General" concept will not be undermined in the slightest degree by a denial of standing to these petitioners.

**G. There Is No Need to Grant Third Parties Standing to Implement National Policy.**

Citing *Barrows v. Jackson*, 346 U.S. 249, 259 (1953), petitioners and amici curiae contend that somehow tenants may be the only or most effective adversaries to challenge discriminatory practices of a landlord. This contention is somewhat of an indulgence in naiveté for it is well known that suits such as this are backed by persons or groups active in the movements they represent. If indeed any discriminatory housing practices have occurred on the scale asserted, or on any scale, it imposes no undue burden or hardship whatever to prosecute the action in the name or names of the victims of the discrimination. Unlike this case, the issues in such an action would be real, live and subject to rebuttal or settlement. The exact contrary is true when the action is brought by third persons who have not been the victims of an unlawful act. Thus, there is no way to resolve the dispute by providing housing to the person offended, the primary objective and purpose of the Fair Housing Act and § 1982. Instead, the action would inevitably devolve into one of "value preferences" (cf.

*Sierra Club v. Morton* at 1369) in which the plaintiff tenant would attempt to substitute his judgment for that of his landlord.

The ready availability of *proper* plaintiffs was demonstrated by occurrences related to this case. On February 25, 1971—fifteen days after the District Court dismissed this action—petitioners' counsel commenced an action entitled "*Burbridge v. Parkmerced Corporation and Metropolitan Life Insurance Company*." A copy of the complaint in that action is Appendix D hereto. The plaintiffs there, all Negroes, allege that they have been the direct victims of discriminatory housing practices which resulted in their exclusion from Parkmerced. The charging allegations are otherwise virtually the same as in this case. The very filing and pendency of that case dissolves and demonstrates the fallacy of the notion that somehow tenants may be the only or most appropriate persons to enforce fair housing laws.

Notwithstanding *Burbridge*, resident tenants are perhaps the least desirable persons to attempt implementation of the national policy of fair housing. They would lack the "personal stake in the outcome of the controversy" (*Baker v. Carr*, 369 U.S. 186, 204 (1962)) which would ensure that "the dispute . . . will be presented in an adversary context and in a form historically viewed as capable of judicial resolution" (*Flast v. Cohen*, *supra*). Each would be necessarily dedicated to his own personal social views rather than to a fair and orderly effectuation of the statutes involved. Further, the inherent transiency of residential tenancies robs tenants of the qualities requisite to standing. The facts of this case provide a compelling lesson in this regard. As heretofore noted (n. 2 p. 6), every individual plaintiff in intervention has moved from Parkmerced and one plaintiff is about to move. Even under their own theories of standing they now have neither a personal stake in the outcome of the controversy nor a cognizable—or

perhaps any—interest in the subject matter of the complaint.<sup>21</sup>

Finally, it is totally unnecessary to grant standing to petitioners to implement the enforcement features of the statutes. Private enforcement by proper plaintiffs is expressly authorized. Additionally, Congress has specifically authorized the Attorney General, and only the Attorney General, to maintain this type of “pattern or practice” case. § 3613 of the Fair Housing Act provides:

“Whenever the Attorney General has reasonable cause to believe that any person or group or persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title, or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance, he may bring a civil action in any appropriate United States district court by filing with it a complaint setting forth the facts and requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such pattern or practice or denial of rights, as he deems necessary to insure the full enjoyment of the rights granted by this title.”

This specific statutory grant of authority to the Attorney General evidences Congress’ intent that this type action be brought only by the Attorney General. Had Congress intended otherwise it would have said so. Had it intended to authorize any volunteer to bring this type action § 3613 would have been unnecessary.<sup>22</sup>

21. Cf. *Brown v. Ballas*, 331 F.Supp. 1033, which held that the injunctive aspects of a case brought under the Fair Housing Act became moot when the plaintiff was given the housing sought.

22. Respondent does not contend that the authority granted to the Attorney General diminishes the right of a person directly aggrieved to seek private enforcement of the Fair Housing Act to the extent contemplated by the statutes.



"It is the policy of the United States to provide for . . . fair housing" (42 U.S.C. § 3601). The national policy can be implemented and enforced fully and effectively by the extensive procedures and efficient machinery contained in the Fair Housing Act itself. In *Jones v. Mayer* this Court described the Act as (p. 417):

" . . . a detailed housing law, applicable to a broad range of discriminatory practices and enforceable by a complete arsenal of federal authority."

The arsenal need not be augmented to include unnecessary, meaningless and inconclusive lawsuits by volunteers.

## II

### JURISDICTION

#### A. The Federal Court Does Not Have Subject Matter Jurisdiction Over the Claims Asserted Under the Fair Housing Act.

##### 1. CLAIMS UNDER § 3610.

§ 3610 of the Fair Housing Act provides:

"(d) If within thirty days after a complaint is filed with the Secretary or within thirty days after expiration of any period of reference under subsection (c) of this section, the Secretary has been unable to obtain voluntary compliance with this subchapter, the person aggrieved may, within thirty days thereafter, commence a civil action in any appropriate United States district court, against the respondent named in the complaint, to enforce the rights granted or protected by this subchapter, insofar as such rights relate to the subject of the complaint: *Provided, That no such civil action may be brought in any United States district court if the person aggrieved has a judicial remedy under a State or local fair housing law which provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this subchapter.* . . ."  
(Emphasis added.)



Petitioners Trafficante and Carr elected to pursue the procedure of filing a complaint with the Secretary of H.U.D. as authorized by § 3610 (R. Ex. A at 5). The State of California has a comprehensive fair housing law generally known as the Rumford Act (Health and Safety Code, § 35700 et seq.) which provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided by the Fair Housing Act.<sup>23</sup> The statement of policy in both Acts is substantially the same (Federal Act § 3601; State Act § 35700). Both make unlawful the same practices (Federal Act §§ 3604, 3605, 3606; State Act § 35720), and both allow an aggrieved party to file a complaint with an administrative agency (Federal Act § 3610(a); State Act § 35731). Both State and Federal agencies are required to conduct appropriate investigations (Federal Act § 3610; State Act § 35732). Both Acts provide for injunctive relief (Federal Act §§ 3610(d), 3612; State Act § 35734). An award of damages is authorized by both Acts under certain circumstances (Federal Act § 3612; State Act § 35738) and both have judicial remedies (Federal Act §§ 3610(d), 3612; State Act §§ 35734, 35738). In many respects the Rumford Act confers upon an aggrieved person remedies superior to those of the Fair Housing Act but in any event there is little, if anything, that could not be accomplished under the Rumford Act that could be achieved under the Fair Housing Act. The Rumford Act contains the judicial remedies contemplated by § 3610(d), such remedies being provided by

23. Equivalence is recognized by the H.U.D. In a letter to Metropolitan the Department said (R. Ex. D at Ex. 1):

"\* \* \* we have found that the State law provides rights and remedies substantially equivalent to those provided by the Federal law."

California Health and Safety Code §§ 35730 and 35738; Government Code § 11523; and Labor Code § 1428.<sup>24</sup>

The Unruh Civil Rights Act (Civ. Code §§ 51, 52) provides further, although alternative,<sup>25</sup> remedies to a person aggrieved. Like the Fair Housing Act, *Unruh* prohibits discrimination in housing (Civ. Code § 51), provides a damage remedy (Civ. Code § 52) and authorizes injunctive relief (*Vargas v. Hampson*, 57 C.2d 479; 20 Cal. Rptr. 618; 370 P.2d 322).<sup>26</sup>

Congressional concern for deference to State or local remedies is pointedly expressed in the congressional history of the Fair Housing Act. In commenting on judicial enforcement procedures, Senator Miller stated:

"It seems to me that if a State or local fair housing law provides substantially equivalent rights and remedies, if we are going to let the local agencies of government carry out their responsibilities, they should be given the opportunity to do so.

. . . . .

"That is why I provide in the second part of my amendment that no civil action may be brought in any U. S. district court if the person aggrieved has a judicial remedy under a State or local fair housing law which provides substantially equivalent rights and remedies to this act.

"I believe it is a matter of letting the State and local courts have jurisdiction. We in the Senate know that our Federal district court calendars are crowded enough, without adding to that load if there is a good remedy under State law."

24. To bar a Federal forum, § 3610(d) requires only that there be a judicial remedy under a State or local fair housing law which provides rights and remedies which are substantially equivalent to the rights and remedies provided in the Fair Housing Act. It does not require that the judicial remedy itself be equivalent to the judicial remedy under the Federal statute.

25. Health and Safety Code § 35731.

26. The Unruh and Rumford Acts were the subjects of this Court's decision in *Reitman v. Mulkey*, 387 U.S. 369.

to which Senator Hart responded:

"Mr. President, the Senator from Iowa in making the suggestion may very well have improved the Bill. It certainly recognizes the desire all of us share that the State remedies, where adequate, be availed of and that unnecessary burdening litigation not further clog the court calendars.

"The Senator from Iowa in developing this approach has made the Bill much more acceptable. The senior Senator from Illinois [Mr. Dirksen] whose substitute we are actually discussing, shares this opinion."<sup>27</sup>

In *Colon v. Tompkins Square Neighbors, Inc.*, 289 F.Supp. 104 (S.D. N.Y.), the Court refused to assume jurisdiction of a cause based on alleged racial discrimination in housing because of the existence of a State statute providing rights and remedies substantially equivalent to the Federal Fair Housing Act. The Court noted Congressional intent, viz.: (pp. 109-110)

"However, as this Court pointed out in its original decision, the Congress, in Section 810(d) of the 1968 Civil Rights Act, clearly expressed its intent that any person who claims to have been injured as a result of an alleged discriminatory housing practice must, as a prerequisite to the commencement of a suit in any United States district court, pursue his remedy in the state forum, assuming such a remedy is available and is substantially equivalent to the rights and remedies provided by Congress in the 1968 legislation."

The Federal and State Acts clearly provide substantially equivalent rights and remedies and, accordingly, the jurisdictional proviso of § 3610(d) is operative.

---

27. 114 Cong. Rec. 4987.

## 2. CLAIMS UNDER § 3612.

Petitioners Trafficante and Carr have also proceeded under § 3612 of the Fair Housing Act. The latter Section does not contain the specific prohibition of Federal jurisdiction appearing in § 3610(d) but the legislative history of the Act makes it reasonably clear that Congress intended the jurisdictional proviso of § 3610(d) to be applicable to any suit brought under the Act. Nothing in the discussions or comments relating to jurisdiction indicate an intent to provide a broader base of federal jurisdiction under § 3612 than under § 3610. There is no apparent reason for allowing an action to be brought in a Federal Court under § 3612 if the same action under § 3610 is prohibited.<sup>28</sup>

In any event, the remedies provided in §§ 3610 and 3612 are alternative, not concurrent. On April 10, 1968 Representative Ford quoted from a study memorandum, viz.:

"Section 812 states what is apparently an alternative to the conciliation-then-litigation approach above

---

28. In commenting upon §§ 3610 and 3612, the author of 82 Harvard Law Review 834 observed (pp. 855-856):

"It has been tentatively assumed throughout this Note that direct access is available under section 812 of title VIII. This assumption may not be easily accepted by courts. Section 812 may be thought to refer only to those actions properly before a federal court after the procedures outlined in section 810 have been followed. The argument is persuasive for the same reasons advanced to deny direct access under title VII. The agency procedures under title VIII are quite detailed. To permit bypassing threatens to render useless the elaborate steps taken to promote voluntary compliance and state and local participation in eliminating discrimination. In addition, the anomalies which apparently result from permitting direct access under title VIII are even less capable of rationalization than those which would result in the context of title VII. For example, section 810(d) explicitly requires federal courts to defer to appropriate state courts. If section 812, which contains no such requirement, is interpreted as an independent and direct route to the court, the concern for deferral is abandoned for no apparent reason."

stated: an aggrieved person within 180 days after the alleged discriminatory practice occurred, may, without complaining to HUD, file an action in the appropriate U. S. district court. \* \* \* If the aggrieved party has first sought the assistance of the Secretary and then files an action within thirty days of his filing the complaint with the Secretary, *then the civil action arises under section 810(d)*, a section to which the expedition requirement of section 814 does not apply." (Emphasis added)<sup>29</sup>

Having availed themselves of the procedures set forth in § 3610, Trafficante and Carr should be held subject to the mandates of that Section.<sup>30</sup> It was noted in *Colon v. Tompkins Square Neighbors, Inc.*, supra that: (p. 107)

"\* \* \* the Court never intended to provide alternative forums, the choice of which depended solely on the whim of the plaintiff with total disregard for the adequacy of state mechanisms."

The plaintiffs in intervention, who have proceeded directly under § 3612 without prior resort to the administrative procedures of § 3610, occupy no better jurisdictional position than petitioners Trafficante and Carr. Since California has fair housing laws which provide rights and remedies for discriminatory housing practices which are substantially equivalent to the rights and remedies of the Fair Housing Act, the plaintiffs in intervention should be relegated to their State law remedies by reason of § 3610(d)

29. 114 Cong. Rec. 9612.

30. *Johnson v. Decker*, 333 F.Supp. 88 (D.C. Ca.) is distinguishable. There an action was filed under § 3612 by several plaintiffs after one had filed an administrative complaint under § 3610. Unlike this case, no attempt was made to assert claims under § 3610 and § 3612 at the same time in the same judicial proceeding.

of the Fair Housing Act.<sup>31</sup> There appears to be no reason or justification for permitting this action to be filed in a Federal Court in California. If such action is authorized without regard to the adequacy of State remedies the jurisdictional limitation of § 3610(d) will have been nullified.

**B. Under the Circumstances of This Case the Federal Court Should Abstain from Exercising Jurisdiction of the Claims Under § 1982.**

The Federal Court should not accept jurisdiction of the causes of action of the Complaint and Complaint in Intervention which are predicated upon an alleged violation of 42 U.S.C. § 1982. In *Hunter v. Erickson*, 393 U.S. 385 (1969), this Court admonished that the (p. 388):

“ \* \* \* 1866 Civil Rights Act considered in *Jones v. Mayer*, 392 U.S. 409] should be read together with the later statute *on the same subject* (citations) so as not to pre-empt the local legislation which the far more detailed Act of 1968 so explicitly preserves.” (Emphasis added.)

The subject matter of the petitioners' § 3610, § 3612, and § 1982 claims are exactly the same and they should not be allowed to strip the Fair Housing Act's mandatory deference to State and local fair housing laws by simply resorting to § 1982. The combined rationale of *Jones*, *Hunter*, and *Colon* requires that, at the very least, Federal Courts should abstain from exercising jurisdiction under the circumstances of this case.

---

31. In *Brown v. Lo Duca*, 307 F.Supp. 102, and *Johnson v. Decker*, 333 F.Supp. 88, direct access to the District Court under § 3612 was allowed. Those decisions, however, appear irreconcilable with the combined effect of *Jones v. Mayer*, *Hunter v. Erickson*, 393 U.S. 385, *Colon v. Tompkins Square Neighbors, Inc.*, the congressional history of the Fair Housing Act, and the specific mandate and spirit of § 3610(d).



**THE CASE IS MOOT AS TO METROPOLITAN**

As heretofore noted, on December 21, 1970, Metropolitan sold the buildings, structures and improvements constituting Parkmerced and leased the underlying land to Parkmerced Corporation for an initial term of thirty years. On that date, Metropolitan was divested of all right to manage, control or otherwise operate Parkmerced, including the rental of apartment units, and it no longer has any employees engaged in Parkmerced operations (R. Ex. K at 1, 2).

In *United States of America v. W. T. Grant Company*, 345 U.S. 629 (1953) this Court stated (p. 633):

"Along with its power to hear the case, the court's power to grant injunctive relief survives discontinuance of the illegal conduct. (Citations.) The purpose of an injunction is to prevent future violations, (citation) and, of course, it can be utilized even without a showing of past wrongs. But the moving party must satisfy the court that relief is needed. *The necessary determination is that there exists some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive.*" (Emphasis added.)

Similarly, in *United States v. Concentrated Phosphate Export Association, Inc.*, 393 U.S. 199 (1968), the Court observed (p. 203):

"A case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur. (393 U.S. 199, 203.)

See, also:

*United States of America v. Alaska Steamship Company*, 253 U.S. 113 (1920);



*Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957);

*Alejandrino v. Quezon*, 271 U.S. 528 (1926);

*Golden v. Zwickler*, 394 U.S. 103 (1969);

*Alameda Conservation Association, et al. v. State of California, et al.*, 437 F.2d 1087 (Ca. 9) cert. den. 402 U.S. 928;

*McKee & Co. v. First National Bank of San Diego*, 397 F.2d 248 (Ca 9)

In *Powell v. McCormack*, 395 U.S. 486 (1969), this Court capsuled the mootness rule, viz.: (p. 496)

"Simply stated, a case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome."

This action is now moot as to Metropolitan. There exists no "cognizable danger of recurrent violation" (*United States of America v. W. T. Grant Company*, supra). The fact that the petitioners have claimed damages does not save the case from the mootness doctrine as it did in *Powell* and *Textile Workers Union*. Petitioners here are not entitled to damages in any event.

The prayer for injunctive relief against Metropolitan is now academic. While petitioners challenged Metropolitan's claim to mootness in the courts below they did concede that "a court would have difficulty in enforcing an affirmative action order against a seller who no longer controlled the rental offices or the business operations of the project \* \* \*." Having no control whatever over the operation of Parkmerced, Metropolitan would be powerless at this time to comply with any injunctive order, either prohibitory or mandatory, that a Court might otherwise theoretically make.

**CONCLUSION**

For the foregoing reasons the Judgment of the Court of Appeals should be affirmed.

Dated: July 14, 1972.

Respectfully submitted,

**RICHARD J. KILMARTIN**  
**KNIGHT, BOLAND & RIORDAN**

*Attorneys for*  
*Respondent*  
*Metropolitan Life*  
*Insurance Company*

## **Appendix A**

*In the United States District Court for the  
Northern District of California*

Case No. C-70 1754(RHS)

Paul J. Trafficante, et al.,  
*Plaintiffs,*

and

Committee of Parkmerced Residents Com-  
mitted to Open Occupancy, et al.,  
*Plaintiffs in Intervention,*

v.

Metropolitan Life Insurance Company,  
et al.,

*Defendants.*

### **MEMORANDUM OPINION AND ORDER DISMISSING COMPLAINT AND COMPLAINT IN INTERVENTION**

Plaintiffs, residents of the Parkmerced complex of apartments and town houses in San Francisco, brought this action under 42 U.S.C. § 1982 and the fair housing provisions of Title VIII of the Civil Rights Act of 1968, 42 U.S.C., Chapter 45, alleging that defendant Metropolitan, the then owner and operator of Parkmerced, was engaging in discriminatory housing practices in violation of the Act, making Parkmerced what plaintiffs have repeatedly referred to in this litigation as a "white ghetto" and depriving plaintiffs of their alleged right to live in a racially integrated community. A complaint in intervention was filed by community organizations and civic-minded individuals reiterating substantially the same claims. During the course of the litigation Metropolitan sold substantially all its interests in Parkmerced to Parkmerced Corporation, which now operates it and was joined as a defendant.

The threshold question, of course, is whether the plaintiffs have standing to maintain this action. They do not allege, nor can they, that they themselves have been denied any of the rights guaranteed by Title VIII or by 42 U.S.C. § 1982 to purchase or rent real property. Rather, they assert that the denial of such rights to others not parties to this action violates the policies of the Act and has resulted in denying them the benefits of living in the type of integrated community which Congress hoped to achieve by enacting Title VIII.

The Court, after full review of the voluminous memoranda submitted, has concluded that plaintiffs and plaintiffs in intervention have no such generalized standing as they assert to enforce the policies of the Act. More specifically, they are not "persons aggrieved" under § 810 of the Act, 42 U.S.C. § 3610(a), and therefore may not maintain this suit under § 812, 42 U.S.C. § 3612, or under 42 U.S.C. § 1982. The enforcement of the public interest in fair housing enunciated in Title VIII of the Act and the creation of integrated communities to the extent envisioned by Congress are entrusted to the Attorney General by § 814, 42 U.S.C. § 3613, and not to private litigants such as those before the Court.

In reaching this conclusion the Court is not unmindful of the "private attorneys general" cases heavily relied upon by plaintiffs, including, quite recently, *Data Processing Service v. Oamp*, 397 U.S. 150 (1970). Each of such cases, however, was brought under the Administrative Procedure Act or otherwise involved action by a government agency and not the activities of private individuals such as are involved here. These cases are extensively reviewed and distinguished in *Sierra Club v. Hickel*, 433 F. 2d 24 (9th Cir. 1970).

The motions to dismiss are granted and the complaint and complaint in intervention herein are dismissed.

Dated: February 10, 1971

ROBERT H. SCHNACKE

Robert H. Schnacke

*United States District Judge*

**Appendix**  
**Appendix B**

**United States Court of Appeals  
for the Ninth Circuit**

**No. 71-1325**

**Filed Sep 13 1971**

**Wm. B. Luck, Clerk**

**Paul J. Trafficante, et al.,**

***Plaintiffs and Appellants,***

**vs.**

**Metropolitan Life Insurance Company, et al.,**

***Appellees.***

**Before: CHAMBERS and CARTER, Circuit Judges,  
and JAMESON, District Judge.**

**The petition for a rehearing is denied. The suggestion for  
a rehearing en banc is rejected.**

**All active circuit judges of the court have been advised  
of the suggestion for a rehearing en banc and none has re-  
quested it.**



**Appendix C**

**C 1. FAIR HOUSING ACT OF 1968**

42 U.S.C. §§ 3601-3619

**§ 3601. Declaration of policy**

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

Pub.L. 90-284, Title VIII, § 801, Apr. 11, 1968, 82 Stat. 81.

**§ 3602. Definitions**

As used in this subchapter—

(a) "Secretary" means the Secretary of Housing and Urban Development.

(b) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) "Family" includes a single individual.

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

(e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) "Discriminatory housing practice" means an act that is unlawful under section 3604, 3605, or 3606 of this title.

(g) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

Pub.L. 90-284, Title VIII, § 802, Apr. 11, 1968, 82 Stat. 81.



§ 3603. Effective dates of certain prohibitions—Application to certain described dwellings

(a) Subject to the provisions of subsection (b) of this section and section 3607 of this title, the prohibitions against discrimination in the sale or rental of housing set forth in section 3604 of this title shall apply:

(1) Upon enactment of this subchapter, to—

(A) dwellings owned or operated by the Federal Government;

(B) dwellings provided in whole or in part with the aid of loans, advances, grants, or contributions made by the Federal Government, under agreements entered into after November 20, 1962, unless payment due thereon has been made in full prior to April 11, 1968;

(C) dwellings provided in whole or in part by loans insured, guaranteed, or otherwise secured by the credit of the Federal Government, under agreements entered into after November 20, 1962, unless payment thereon has been made in full prior to April 11, 1968: *Provided*, That nothing contained in subparagraphs (B) and (C) of this subsection shall be applicable to dwellings solely by virtue of the fact that they are subject to mortgages held by an FDIC or FSLIC institution; and

(D) dwellings provided by the development or the redevelopment of real property purchased, rented, or otherwise obtained from a State or local public agency receiving Federal financial assistance for slum clearance or urban renewal with respect to such real property under loan or grant contracts entered into after November 20, 1962.

(2) After December 31, 1968, to all dwellings covered by paragraph (1) and to all other dwellings except as exempted by subsection (b) of this section.

Exemptions

(b) Nothing in section 3604 of this title (other than subsection (c)) shall apply to—

(1) any single-family house sold or rented by an owner: *Provided*, That such private individual owner does not own more than three such single-family houses at any one time: *Provided further*, That in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period: *Provided further*, That such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time: *Provided further*, That after December 31, 1969, the sale or rental of any such single-family house shall be excepted from the application of this subchapter only if such house is sold or rented (A) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person and (B) without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of section 3604(c) of this title; but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title, or

(2) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

Same; business of selling or renting dwellings defined

(c) For the purposes of subsection (b) of this section, a person shall be deemed to be in the business of selling or renting dwellings if—

(1) he has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or

(2) he has, within the preceding twelve months, participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or

(3) he is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

Pub.L. 90-284, Title VIII, § 803, Apr. 11, 1968, 82 Stat. 82.

§ 3604. Discrimination in the sale or rental of housing

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that

indicates any preferences, limitation, or discrimination based on race, color, religion, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, or national origin.

Pub.L. 90-284, Title VIII, § 804, Apr. 11, 1968, 82 Stat. 83.

§ 3605. Discrimination in the financing of housing

After December 31, 1968, it shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, or national origin of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given: *Provided*, That nothing contained in this section shall impair the scope

or effectiveness of the exception contained in section 3603(b) of this title.

Pub.L. 90-284, Title VIII, § 805, Apr. 11, 1968, 82 Stat. 83.

§ 3606. Discrimination in the provision of brokerage services

After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, or national origin.

Pub.L. 90-284, Title VIII, § 806, Apr. 11, 1968, 82 Stat. 84.

§ 3607. Religious organization or private club exemption

Nothing in this subchapter shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this subchapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

Pub.L. 90-284, Title VIII, § 807, Apr. 11, 1968, 82 Stat. 84.

§ 3608. Administration—Authority and responsibility

(a) The authority and responsibility for administering this Act shall be in the Secretary of Housing and Urban Development.

Delegation of authority; appointment of hearing  
examiners; location of conciliation meetings;  
administrative review

(b) The Secretary may delegate any of his functions, duties, and powers to employees of the Department of Housing and Urban Development or to boards of such employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under this subchapter. The persons to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Department of Housing and Urban Development in compliance with sections 3105, 3344, 5362, and 7521 of Title 5. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred. The Secretary shall by rule prescribe such rights of appeal from the decisions of his hearing examiners to other hearing examiners or to other officers in the Department, to boards of officers or to himself, as shall be appropriate and in accordance with law.

Cooperation of Secretary and executive departments and  
agencies in administration of housing and urban  
development programs and activities to  
further fair housing purposes

(c) All executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to fur-



ther the purposes of this subchapter and shall cooperate with the Secretary to further such purposes.

### Functions of Secretary

(d) The Secretary of Housing and Urban Development shall—

(1) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States;

(2) publish and disseminate reports, recommendations, and information derived from such studies;

(3) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(4) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices; and

(5) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this subchapter.

Pub.L. 90-284, Title VIII, § 808(a), (c)-(e), Apr. 11, 1968, 82 Stat. 84, 85

§ 3609. Education and conciliation, conferences and consultations; reports

Immediately after April 11, 1968, the Secretary shall commence such educational and conciliatory activities as in his judgment will further the purposes of this subchapter. He shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this subchapter and his suggested means of



implementing it, and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement. He may pay per diem, travel, and transportation expenses for persons attending such conferences as provided in section 5703 of Title 5. He shall consult with State and local officials and other interested parties to learn the extent, if any, to which housing discrimination exists in their State or locality, and whether and how State or local enforcement programs might be utilized to combat such discrimination in connection with or in place of, the Secretary's enforcement of this subchapter. The Secretary shall issue reports on such conferences and consultations as he deems appropriate.

Pub.L. 90-284, Title VIII, § 809, Apr. 11, 1968 82 Stat. 85.

§ 3610. Enforcement—Person aggrieved; complaint; copy; investigation; informed proceedings; violations of secrecy; penalties

(a) Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a complaint with the Secretary. Complaints shall be in writing and shall contain such information and be in such form as the Secretary requires. Upon receipt of such a complaint the Secretary shall furnish a copy of the same to the person or persons who allegedly committed or are about to commit the alleged discriminatory housing practice. Within thirty days after receiving a complaint, or within thirty days after the expiration of any period of reference under subsection (c) of this section, the Secretary shall investigate the complaint and give notice in writing to the person aggrieved whether he intends to resolve it. If the Secretary decides to resolve the

complaint, he shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under this subchapter without the written consent of the persons concerned. Any employee of the Secretary who shall make public any information in violation of this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned not more than one year.

Complaint; limitations; answer; amendments; verification

(b) A complaint under subsection (a) of this section shall be filed within one hundred and eighty days after the alleged discriminatory housing practice occurred. Complaints shall be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him and with the leave of the Secretary, which shall be granted whenever it would be reasonable and fair to do so, may amend his answer at any time. Both complaints and answer shall be verified.

Notification of State or local agency of violation of State or local fair housing law; commencement of State or local law enforcement proceedings; certification of circumstances requisite for action by Secretary

(c) Wherever a State or local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this subchapter, the Secretary shall notify the appropriate State or local agency of any complaint filed under this subchapter which appears to

constitute a violation of such State or local fair housing law, and the Secretary shall take no further action with respect to such complaint if the appropriate State or local law enforcement official has, within thirty days from the date the alleged offense has been brought to his attention, commenced proceedings in the matter, or having done so, carries forward such proceedings with reasonable promptness. In no event shall the Secretary take further action unless he certifies that in his judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action.

Commencement of civil actions; State or local remedies available; jurisdiction and venue; findings; injunctions; appropriate affirmative orders

(d) If within thirty days after a complaint is filed with the Secretary or within thirty days after expiration of any period of reference under subsection (c) of this section, the Secretary has been unable to obtain voluntary compliance with this subchapter, the person aggrieved may, within thirty days thereafter, commence a civil action in any appropriate United States district court, against the respondent named in the complaint, to enforce the rights granted or protected by this subchapter, insofar as such rights relate to the subject of the complaint: *Provided*, That no such civil action may be brought in any United States district court if the person aggrieved has a judicial remedy under a State or local fair housing law which provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this subchapter. Such actions may be brought without regard to the amount in controversy in any United States district court for the district in which the discriminatory housing practice is alleged

to have occurred or be about to occur or in which the respondent resides or transacts business. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may, subject to the provisions of section 3612 of this title, enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate.

### Burden of proof

(e) In any proceeding brought pursuant to this section, the burden of proof shall be on the complainant.

### Trial of action; termination of voluntary compliance efforts

(f) Whenever an action filed by an individual, in either Federal or State court, pursuant to this section or section 3612 of this title, shall come to trial the Secretary shall immediately terminate all efforts to obtain voluntary compliance.

Pub.L. 90-284, Title VIII, § 810, Apr. 11, 1968, 82 Stat. 85.

§ 3611. Evidence—Investigation; access to records, documents, and other evidence; copying; searches and seizures; subpoenas for Secretary; interrogatories; administration of oaths

(a) In conducting an investigation the Secretary shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation: *Provided, however,* That the Secretary first complies with the provisions of the Fourth Amendment relating to unreasonable searches

and seizures. The Secretary may issue subpoenas to compel his access to or the production of such materials, or the appearance of such persons, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in the United States district court for the district in which the investigation is taking place. The Secretary may administer oaths.

#### Subpoenas for respondent

(b) Upon written application to the Secretary, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the Secretary to the same extent and subject to the same limitations as subpoenas issued by the Secretary himself. Subpoenas issued at the request of a respondent shall show on their face the name and address of such respondent and shall state that they were issued at his request.

#### Compensation and mileage fees of witnesses

(c) Witnesses summoned by subpoena of the Secretary shall be entitled to the same witness and mileage fees as are witnesses in proceedings in United States district courts. Fees payable to a witness summoned by a subpoena issued at the request of a respondent shall be paid by him.

#### Revocation or modification of petition for subpoena; good reasons for grant of petition

(d) Within five days after service of a subpoena upon any person, such person may petition the Secretary to revoke or modify the subpoena. The Secretary shall grant the petition if he finds that the subpoena requires appearance or attendance at an unreasonable time or place, that

it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.

#### Enforcement of subpoena

(e) In case of contumacy or refusal to obey a subpoena, the Secretary or other person at whose request it was issued may petition for its enforcement in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

#### Violations; penalties

(f) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if in his power to do so, in obedience to the subpoena or lawful order of the Secretary, shall be fined not more than \$1,000 or imprisoned not more than one year, or both. Any person who, with intent thereby to mislead the Secretary, shall make or cause to be made any false entry or statement of fact in any report, account, record, or other document submitted to the Secretary pursuant to his subpoena or other order, or shall willfully neglect or fail to make or cause to be made full, true, and correct entries in such reports, accounts, records, or other documents, or shall willfully mutilate, alter, or by any other means falsify any documentary evidence, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

#### Attorney General to conduct litigation

(g) The Attorney General shall conduct all litigation in which the Secretary participates as a party or as amicus pursuant to this Act.

Pub.L. 90-284, Title VIII, § 811, Apr. 11, 1968, 82 Stat. 87.



§ 3612. Enforcement by private persons—Civil action; Federal and State jurisdiction; complaint; limitations; continuance pending conciliation efforts; prior bona fide transactions unaffected by court orders

(a) The rights granted by sections 3603, 3604, 3605, and 3606 of this title may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred: *Provided, however,* That the court shall continue such civil case brought pursuant to this section or section 3610(d) of this title from time to time before bringing it to trial if the court believes that the conciliation efforts of the Secretary or a State or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the Secretary or to the local or State agency and which practice forms the basis for the action in court: *And provided, however,* That any sale, encumbrance, or rental consummated prior to the issuance of any court order issued under the authority of this Act, and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of this Act shall not be affected.

Appointment of counsel and commencement of civil actions in Federal or State courts without payment of fees, costs, or security

(b) Upon application by the plaintiff and in such circumstances as the court may deem just, a court of the United States in which a civil action under this section has been



brought may appoint an attorney for the plaintiff and may authorize the commencement of a civil action upon proper showing without the payment of fees, costs, or security. A court of a State or subdivision thereof may do likewise to the extent not inconsistent with the law or procedures of the State or subdivision.

Injunctive relief and damages; limitation;  
court costs; attorney fees

(c) The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual damages and not more than \$1,000 punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff: *Provided*, That the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees.

Pub.L. 90-284, Title VIII, § 812, Apr. 11, 1968, 82 Stat. 88.

§ 3613. Enforcement by the Attorney General; issues of general public importance; civil action; Federal jurisdiction; complaint; preventive relief

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this subchapter, or that any group of persons has been denied any of the rights granted by this subchapter and such denial raises an issue of general public importance, he may bring a civil action in any appropriate United States district court by filing with it a complaint setting forth the facts and requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such pattern

or practice or denial of rights, as he deems necessary to insure the full enjoyment of the rights granted by this subchapter.

Pub.L. 90-284, Title VIII, § 813, Apr. 11, 1968, 82 Stat. 88.

**§ 3614. Expedition of proceedings**

Any court in which a proceeding is instituted under section 3612 or 3613 of this title shall assign the case for hearing at the earliest practicable date and cause the case to be in every way expedited.

Pub.L. 90-284, Title VIII, § 814, Apr. 11, 1968, 82 Stat. 88.

**§ 3615. Effect on State laws**

Nothing in this subchapter shall be construed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this subchapter shall be effective, that grants, guarantees, or protects the same rights as are granted by this subchapter; but any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid.

Pub.L. 90-284, Title VIII, § 815, Apr. 11, 1968, 82 Stat. 89.

**§ 3616. Cooperation with State and local agencies administering fair housing laws; utilization of services and personnel; reimbursement; written agreements; publication in Federal Register**

The Secretary may cooperate with State and local agencies charged with the administration of State and local fair housing laws and, with the consent of such agencies, utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may reimburse such agencies and their employees for services rendered to assist him in carrying out this subchapter. In furtherance

of such cooperative efforts, the Secretary may enter into written agreements with such State or local agencies. All agreements and terminations thereof shall be published in the Federal Register.

Pub.L. 90-284, Title VIII, § 816, Apr. 11, 1968, 82 Stat. 89.

**§ 3617. Interference, coercion, or intimidation; enforcement by civil action**

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title. This section may be enforced by appropriate civil action.

Pub.L. 90-284, Title VIII, § 817, Apr. 11, 1968, 82 Stat. 89.

**§ 3618. Authorization of appropriations**

There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this subchapter.

Pub.L. 90-284, Title VIII, § 818, Apr. 11, 1968, 82 Stat. 89.

**§ 3619. Separability of provisions**

If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, the remainder of the subchapter and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

Pub.L. 90-284, Title VIII, § 819, Apr. 11, 1968, 82 Stat. 89.

C2 CIVIL RIGHTS ACT OF 1866  
42 U.S.C. § 1982

§ 1982. Property rights of citizens

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

R.S. § 1978.

C3 RUMFORD ACT

California Health and Safety Code § 35700, et seq.

§ 35700. Discrimination against public policy; police power.

The practice of discrimination because of race, color, religion, national origin, or ancestry in housing accommodations is declared to be against public policy.

This part shall be deemed an exercise of the police power of the State for the protection of the welfare, health, and peace of the people of this State.

§ 35720. Unlawful acts. It shall be unlawful:

1. For the owner of any publicly assisted housing accommodation which is in, or to be used for, a multiple dwelling, with knowledge of such assistance, to refuse to sell, rent or lease or otherwise to deny to or withhold from any person or group of persons such housing accommodation because of the race, color, religion, national origin, or ancestry of such person or persons.

2. For the owner of any publicly assisted housing accommodation which is in, or to be used for, a multiple dwelling, with knowledge of such assistance, to discriminate against any person because of the race, color, religion, national origin or ancestry of such person in the terms, conditions or privileges of any publicly assisted housing accommoda-

tions or in the furnishing of facilities or services in connection therewith.

3. For any owner of any publicly assisted housing accommodation which is in, or to be used for, a multiple dwelling, with knowledge of such assistance, to make or to cause to be made any written or oral inquiry concerning the race, color, religion, national origin or ancestry of a person seeking to purchase, rent or lease any publicly assisted housing accommodation for the purpose of violating any of the provisions of this part.

4. For the owner of any publicly assisted housing accommodation which is a single family dwelling occupied by the owner, with knowledge of such assistance, to commit any of the acts prohibited by subdivisions 1, 2, and 3.

5. For the owner of any dwelling, other than a dwelling containing not more than four units, to commit any of the acts prohibited by subdivisions 1, 2, and 3.

6. For any person subject to the provisions of Section 51 of the Civil Code, as that section applies to housing accommodations, as defined in this part, and to transactions relating to sales, rentals, leases, or acquisition of housing accommodations, as defined in this part, to discriminate against any person because of race, color, religion, national origin, or ancestry with reference thereto.

7. For any person, bank, mortgage company or other financial institution to whom application is made for financial assistance for the purchase, organization, or construction of any housing accommodation to discriminate against any person or group of persons because of the race, color, religion, national origin or ancestry of such person or persons, or of prospective occupants or tenants, in the terms, conditions or privileges relating to the obtaining or use of any such financial assistance.

8. For any person to aid, abet, incite, compel or coerce the doing of any of the acts or practices declared unlawful in this section, or to attempt to do so.

§ 35731. Filing of verified complaint with commission; contents; limitation on time for filing; procedure; law governing.

Any person claiming to be aggrieved by an alleged violation of Section 35720 may file with the commission a verified complaint in writing which shall state the name and address of the person alleged to have committed the violation complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the commission. However, no such complaint may be made or filed unless the person claiming to be aggrieved waives any and all rights or claims that he may have under Section 52 of the Civil Code and signs a written waiver to that effect.

No complaint may be filed after the expiration of 60 days from the date upon which the alleged violation occurred. This period may be extended for not to exceed 60 days following the expiration of the initial 60 days, if a person allegedly aggrieved by such violation first obtained knowledge of the facts of such alleged violation after the expiration of the initial 60 days from date of its occurrence.

The State Fair Employment Practice Commission may thereupon proceed upon such complaint in the same manner and with the same powers as provided in Part 4.5 (commencing with Section 1410) of Division 2 of the Labor Code in the case of an unlawful employment practice, and the provisions of that part which are not inconsistent with this part as to the powers, duties and rights of the State Fair Employment Practice Commission, its chairman, members, attorneys or agents, the complainant, the respondent, the

Attorney General and the superior court, shall apply to any proceeding under the provisions of this section. However, Section 1430 of the Labor Code shall not apply to this part, and the Attorney General may not make, sign, or file a complaint under this part.

§ 35732. Preliminary investigation; attempt to eliminate unlawful practice or dismissal of complaint; notice of dismissal; appeal; written accusation.

(a) If such verified complaint alleges facts, directly or upon information and belief, sufficient to constitute a violation of any of the provisions of Section 35720, the chairman of the commission shall designate one of the commissioners to make, with the assistance of the commission's staff, prompt investigation in connection therewith. If such commissioner determines after preliminary investigation that probable cause exists for believing the allegations of the complaint, he shall immediately endeavor to eliminate the alleged unlawful practice by conference, conciliation, and persuasion.

(b) If, after the preliminary investigation, probable cause does not exist for believing the allegations of the complaint, the assigned commissioner shall dismiss the complaint. Notice of dismissal shall be sent to the respondent and the complainant by registered mail—return receipt requested and the complainant then shall have 15 days from the receipt day to file an appeal to the dismissal.

If the assigned commissioner fails to eliminate such alleged unlawful practice and believes probable cause still exists, he may issue and serve in the name of the commission, a written accusation together with a copy of such complaint, as the same may have been amended, requiring the owner named in such accusation, hereinafter referred



to as "respondent," to answer the charges of such accusation at a hearing.

The written accusation, hearings, and all matters pertaining thereto shall be in accordance with the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2 of the Government Code, and the commission shall have all the powers granted therein.

§ 35734. Injunction pending investigation and determination by commission.

The commission, at any time after a complaint is filed with it and it has been determined that probable cause exists for believing that the allegations of the complaint are true and constitute a violation of this part, may bring an action in the superior court to enjoin the owner of the property from taking further action with respect to the rental, lease, or sale of the property until the commission has completed its investigation and made its determination; but a temporary restraining order obtained under this section shall not, in any event, be in effect for more than 20 days. In such action an order or judgment may be entered awarding such temporary restraining order or such preliminary or final injunction in accordance with Section 527 of the Code of Civil Procedure.

§ 35738. Findings of commission; cease and desist order; affirmative action.

If the commission finds that a respondent has engaged in any unlawful practice as defined in this part, the commission shall state its findings of fact and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such practice and to take one of the following affirmative actions, as, in the judgment of the commission, will effectuate the purpose of this part:

(1) The sale or rental of the housing accommodation to the aggrieved person, if it is still available.

(2) The sale or rental of a like accommodation, if one is available, or the next vacancy in a like accommodation.

(3) The payment of damages to the aggrieved person in an amount not to exceed five hundred dollars (\$500), if the commission determines that neither of the remedies under (1) or (2) is available.

The commission may require a report of the manner of compliance.

If the commission finds that a respondent has not engaged in any practice which constitutes a violation of this part, the commission shall state its findings of fact and shall issue and cause to be served on the complainant an order dismissing the said accusation as to such respondent. A copy of its order shall be delivered in all cases to the Attorney General and such other public officers as the commission deems proper.

Any order issued by the commission shall have printed on its face references to the provisions of the Administrative Procedure Act which prescribe the rights of appeal of any party to the proceeding to whose position the order is adverse.

#### C 4. UNRUH CIVIL RIGHTS ACT

##### California Civil Code § 51, 52

§ 51. Equal Rights in All Business Establishments.— This section shall be known, and may be cited, as the Unruh Civil Rights Act.

All persons within the jurisdiction of this State are free and equal, and no matter what their race, color, religion, ancestry, or national origin are entitled to the full and equal accommodations, advantages, facilities, privileges,

or services in all business establishments of every kind whatsoever.

This section shall not be construed to confer any right or privilege on a person which is conditioned or limited by law or which is applicable alike to persons of every color, race, religion, ancestry or national origin.

§ 52. *Penalty for Denial.*—Whoever denies, or who aids, or incites such denial, or whoever makes any discrimination, distinction or restriction on account of color, race, religion, ancestry, or national origin, contrary to the provisions of Section 51 of this code, is liable for each and every such offense for the actual damages, and two hundred fifty dollars (\$250) in addition thereto, suffered by any person denied the rights provided in Section 51 of this code.

## Appendix D

COMPLAINT FOR VIOLATION OF  
FAIR HOUSING LAWS  
BURBRIDGE, et al. vs. PARKMERCED  
CORPORATION, et al  
NORTHERN DISTRICT OF CALIFORNIA  
No. C-71-378 [AJZ]

George H. Clyde, Jr.  
Stephen V. Bomse  
Margaret D. Brown  
44 Montgomery Street, Suite 3000  
San Francisco, California 94104  
Telephone: 981-5000  
Attorneys for Plaintiffs

*In the United States District Court  
for the Northern District of California*

No. C-71-378 ([AJZ])

Charles Burbridge, Ernestine Burbridge,  
Dolores Ellis, Glordean Brown and  
John Hensley, individually and on be-  
half of all persons similarly situated,  
*Plaintiffs,*

vs.

Parkmerced Corporation, a California  
corporation, and Metropolitan Life In-  
surance Company, a New York corpo-  
ration,

*Defendants.*

COMPLAINT FOR VIOLATION OF  
FAIR HOUSING LAWS  
FIRST CAUSE OF ACTION

1. This First Cause of Action is maintained pursuant to § 812 of the Civil Rights Act of 1968, 42 U.S.C. § 3612, to obtain redress and affirmative relief from discrimination in housing practices against plaintiffs and all other persons

similarly situated on the basis of race, color, and/or national origin.

2. Representative plaintiffs Charles Burbridge, Ernestine Burbridge, Dolores Ellis, Glordean Brown and John Hensley are Negro citizens of the United States, and residents of the Northern District of California.

3. Each of the persons named as a plaintiff herein has applied for or attempted to apply for and been refused an apartment at Parkmerced because of his or her race, color, religion, and/or national origin, and as a result of the discriminatory policies and practices of defendants hereinafter described. Plaintiffs Burbridge applied or attempted to apply for an apartment within 180 days of the filing of this Complaint. Plaintiffs Ellis and Brown applied or attempted to apply for an apartment prior to said 180-day period (to wit in or about September, 1969, and August, 1970, respectively) but said applications remained on file and said plaintiffs were ready, willing and able to accept an apartment at Parkmerced within the past 180 days. Plaintiff Hensley applied or attempted to apply for an apartment at Parkmerced in or about April, 1968, and remained ready, willing and able at all times from said date to and including December, 1968, to accept an apartment at Parkmerced but was prevented from obtaining such an apartment by the discriminatory practices hereinafter described, which practices have continued without substantial change to and including the date of filing this Complaint. At the time each plaintiff attempted to make an application for an apartment at Parkmerced he was a bona fide potential applicant for such apartment and was interested in residing at Parkmerced.

4. The plaintiffs named herein are representatives of a class, as defined by Rule 23(a) of the Federal Rules of Civil Procedure, and bring this action on behalf of the

entire class, pursuant to said rule. The class consists of all members of minority racial and ethnic groups, including non-whites and persons of Spanish surname, against whom defendants have discriminated, as hereinafter alleged, and includes members of said groups who have applied for apartments at Parkmerced, who have attempted to apply for such apartments, and who have been discouraged from applying for such apartments. The members of the class are hereinafter referred to as "plaintiff class." The class is so numerous that joinder of all members is impracticable. There are questions of law and fact common to the class. The claims of the representative parties are typical of the claims of the class, and the representatives will fairly and adequately protect the interests of the class. Adjudication of the claims of the representative parties would as a practical matter be dispositive of the interests of other members of the class who are not parties to the adjudication and the defendants herein have acted or refused to act on grounds generally applicable to the class, thereby making declaratory, injunctive or other affirmative relief appropriate to the class as a whole.

5. Defendant Parkmerced Corporation is a California corporation with its principal place of business in the City and County of San Francisco, California, at Parkmerced. Parkmerced Corporation maintains offices and transacts business within the Northern District of California.

6. Defendant Metropolitan Life Insurance Company ("Metropolitan") is a New York corporation with its principal place of business in New York, New York. Metropolitan maintains offices and transacts business, among other places, within the Northern District of California.

7. At all times herein mentioned until December 21, 1970, Metropolitan was the owner of and operated a planned residential community located in San Francisco, California,

known as Parkmerced. The Parkmerced community consists of numerous high-rise apartment buildings and garden-apartment complexes, which were constructed by Metropolitan in the 1940's and the early 1950's. Parkmerced contains approximately 3,500 residential units and provides moderate rental housing for approximately 8,000 people.

8. On or about December 18, and December 21, 1970, defendants Metropolitan and Parkmerced Corporation entered into and consummated various transactions relating to the Parkmerced property including the following:

(a) Metropolitan leased the underlying real property at Parkmerced to Parkmerced Corporation for a thirty-year period, with options to renew said lease for three additional periods of fifteen years each. Said lease provides for rental payable to Metropolitan calculated, under some circumstances, on the basis of revenue from the operations at Parkmerced. No option to purchase said underlying real property was granted to Parkmerced Corporation.

(b) Parkmerced Corporation purchased all of the building improvements and personal property at Parkmerced. Payment therefor is to be made in installments, secured by a deed of trust, a security interest in personal property, and an assignment of rents in favor of Metropolitan.

(c) Metropolitan and Parkmerced Corporation made certain further agreements contemplating concerted future action by them with respect to the operation and ownership of Parkmerced.

9. Since December 21, 1970, Parkmerced Corporation has operated Parkmerced without substantial change in the business operations or policies at said development. All or virtually all of the Parkmerced rental office employees of Metropolitan have been retained by Parkmerced Corporation, and plaintiffs are informed and believe that Park-



merced Corporation presently intends to make no substantial change in the operation or policies of Parkmerced.

10. During the negotiations preceding the transactions described in the paragraph 8 above, the principals, officers, directors, agents, and attorneys of Parkmerced Corporation had knowledge of the allegations of racial discrimination contained hereby by virtue of their familiarity with the case of *Trafficante, et al., v. Metropolitan Life Insurance Company*, (No. C-70-1754 [RHS]) filed in the United States District Court for the Northern District of California on August 18, 1970, and by virtue of correspondence directed to Harry H. Helmsley and Helmsley-Spear, Inc., principals of Parkmerced Corporation.

11. During the past 180 days defendants, and each of them, acting individually and in combination and concert with each other, have systematically discriminated against members of minority racial and ethnic groups, in connection with the offer and rental of dwellings at Parkmerced. As of the date hereof, plaintiffs are informed and believe that members of minority racial and ethnic groups comprise less than 1% of the population of Parkmerced. Said discrimination is continuing as of the date hereof and will continue hereafter unless restrained by this Court, as hereinafter prayed.

12. In particularization of the foregoing, and not in limitation thereof, defendants, and each of them, acting individually and in combination and concert with each other, have discriminated and will continue to discriminate against plaintiffs and all other persons similarly situated in the following ways and manners:

(a) by refusing to rent a dwelling after a prospective tenant has made a bona fide offer, by refusing to negotiate with prospective tenants for the rental of, and by otherwise making unavailable or denying dwellings to prospective

tenants, because of race, color, or national origin of said prospective tenants;

(b) by discriminating against persons in the terms, conditions and privileges of rental of dwellings, and in the provision of services or facilities in connection therewith, because of race, color, or national origin of such persons; and

(c) by representing to persons because of the race, color, or national origin of such persons that dwellings are not available for inspection or rental when such dwellings are in fact so available.

13. In maintaining and furthering their respective practices and policies of discrimination against the named plaintiffs and members of the plaintiff class, defendants, and each of them, acting individually and in combination and concert with each other, have done or caused to be done the following acts, among others:

(a) Defendants have persuaded minority group members who are potential and qualified applicants for rental of dwellings at Parkmerced that they are not welcome at Parkmerced, that applications by them for rental of dwellings at Parkmerced will be denied or never acted upon, and that both residents, management and employees will create a hostile atmosphere for such applicants if admitted as tenants at Parkmerced;

(b) Defendants have discouraged minority-group members who are potential and qualified applicants for the rental of dwellings at Parkmerced from making application by making misrepresentations (through direct statements, omissions, and half-truths) concerning the existence and availability of apartments at Parkmerced, the rental rates, the terms and conditions of rental, the qualifications required of applicants, the waiting list procedures, and the length of time required before apartments will become

available. Defendants have further discouraged minority-group members who are potential and qualified applicants by making rude remarks and insinuations, and by otherwise failing to treat minority-group applicants courteously;

(c) Defendants have failed and refused to permit or accept applications to Parkmerced from minority-group persons while accepting such applications from Caucasians.

(d) Defendants have discriminated against minority-group applicants in the method of processing applications for rental of dwellings at Parkmerced by applying different practices and procedures to minority-group applicants than are applied to Caucasians;

(e) Defendants have manipulated the "waiting list" for dwellings within Parkmerced by giving preference to certain persons and classes of persons, and by delaying action upon the applications of other persons or classes of persons, in such a manner as to discriminate against minority-group applicants;

(f) Defendants have set and maintained standards for acceptance to Parkmerced which effectively discriminate against minority applicants, and have applied such standards in an unequal and discriminatory manner so as to prevent the rental of dwellings by minority groups within Parkmerced;

(g) Defendants have discriminated against minority-group members in the terms and conditions of rental at Parkmerced, and in particular, Parkmerced Corporation has adopted a dual-rent structure whereby new tenants are required to pay substantially higher rental than present tenants whose leases have terminated;

(h) Defendants have systematically attempted to discourage minority applicants from continuing their applications by various means, such as by offering them apart-

ments which are substantially more expensive and less desirable than those actually applied for;

(i) Defendants have adopted policies of giving preferential treatment to certain organizations the members of which are virtually all Caucasian, but have failed and refused to give such preferential treatment to members of similar organizations, many of whose members are of minority groups;

(j) Defendants have adopted policies of giving preferential treatment to certain organizations but have failed to give such preference to minority-group members of such organizations.

(k) Defendants have adopted policies in connection with application for apartments, rentals, and transfers at Parkmerced which are racially neutral on their face, but which have the effect of discriminating against members of minority groups, and which are not justified by any business necessity.

14. Each of the practices, policies and acts above alleged has occurred within 180 days from the date hereof and has also occurred for many years prior thereto.

15. The discriminations against individual plaintiffs and the plaintiff class alleged herein constitute continuing violations, which have occurred throughout the periods when individual plaintiffs were willing and able to rent apartments at Parkmerced on the same terms and conditions as are or were made available to Caucasians. Said violations are occurring as of the date hereof, and will continue to occur unless defendants are restrained by Order of this Court.

16. As a direct and proximate result of the unlawful policies, practices and acts above alleged, plaintiffs and the represented class have been injured in each of the following ways and manners, among others:

(a) by being deprived of the right to reside at Parkmerced and being forced to reside at other locations where they have been compelled to pay greater rent or to accept inferior apartments in less desirable neighborhoods with poorer facilities and services;

(b) by suffering embarrassment, humiliation, and emotional distress.

## SECOND CAUSE OF ACTION

17. This Second Cause of Action is maintained under 42 U.S.C. § 1982, which provides:

"All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

18. Plaintiffs hereby incorporate by reference as if set out fully herein paragraphs 2 through 16, inclusive, of their First Cause of Action.

19. By reason of the foregoing acts of discrimination which have occurred and which will continue to occur unless restrained by appropriate Order of this Court, plaintiffs and members of the class have been and will continue to be deprived of their rights to lease property within Parkmerced on terms and conditions co-equal with those offered to and enjoyed by white citizens.

## DAMAGES AND EQUITABLE RELIEF

20. Plaintiffs are informed and believe and thereon allege that apartments at Parkmerced have been rented for less than the fair market value for comparable rental units in the City and County of San Francisco. Plaintiffs are further informed and believe and thereon allege that the difference between the rates charged for apartments

at Parkmerced and the prevailing rate for comparable rental units in the City and County of San Francisco is at least \$50 per month.

21. Except for the discriminatory policies, practices and acts of defendants as above alleged, at least 1,000 apartments at Parkmerced would have been rented to plaintiffs and/or members of the class herein at all times relevant under 42 U.S.C. § 3612 and 42 U.S.C. § 1982, and plaintiffs and the represented class have therefore been damaged by being compelled to pay excessive rents.

22. In addition to the foregoing damages which have been incurred by the class of persons represented herein, plaintiffs are informed and believe and thereon allege that defendants have knowingly, willfully, and maliciously deprived plaintiffs and the class of rights provided to them under Title VIII of the 1968 Civil Rights Act and 42 U.S.C. § 1982. This is therefore a proper case for the award of punitive and exemplary damages against defendants, and plaintiffs pray for such damages in the amount of \$1,000 for each plaintiff and class member herein for such other sum as may be deemed proper and just in the circumstances, but not less than \$1,000,000. Said damages should be awarded to plaintiffs and to the class and should be applied in the form of rent subsidies and/or economic incentives for the benefit of members of the class in connection with an appropriate plan of affirmative action as hereinafter prayed.

23. Plaintiffs further pray that this Court enter its Order enjoining and restraining defendants and each of them from discriminating against plaintiffs and/or the class in the offer or rental of dwellings at Parkmerced and requiring said defendants, and each of them, to take all affirmative action which is necessary to correct the effects of prior discrimination.



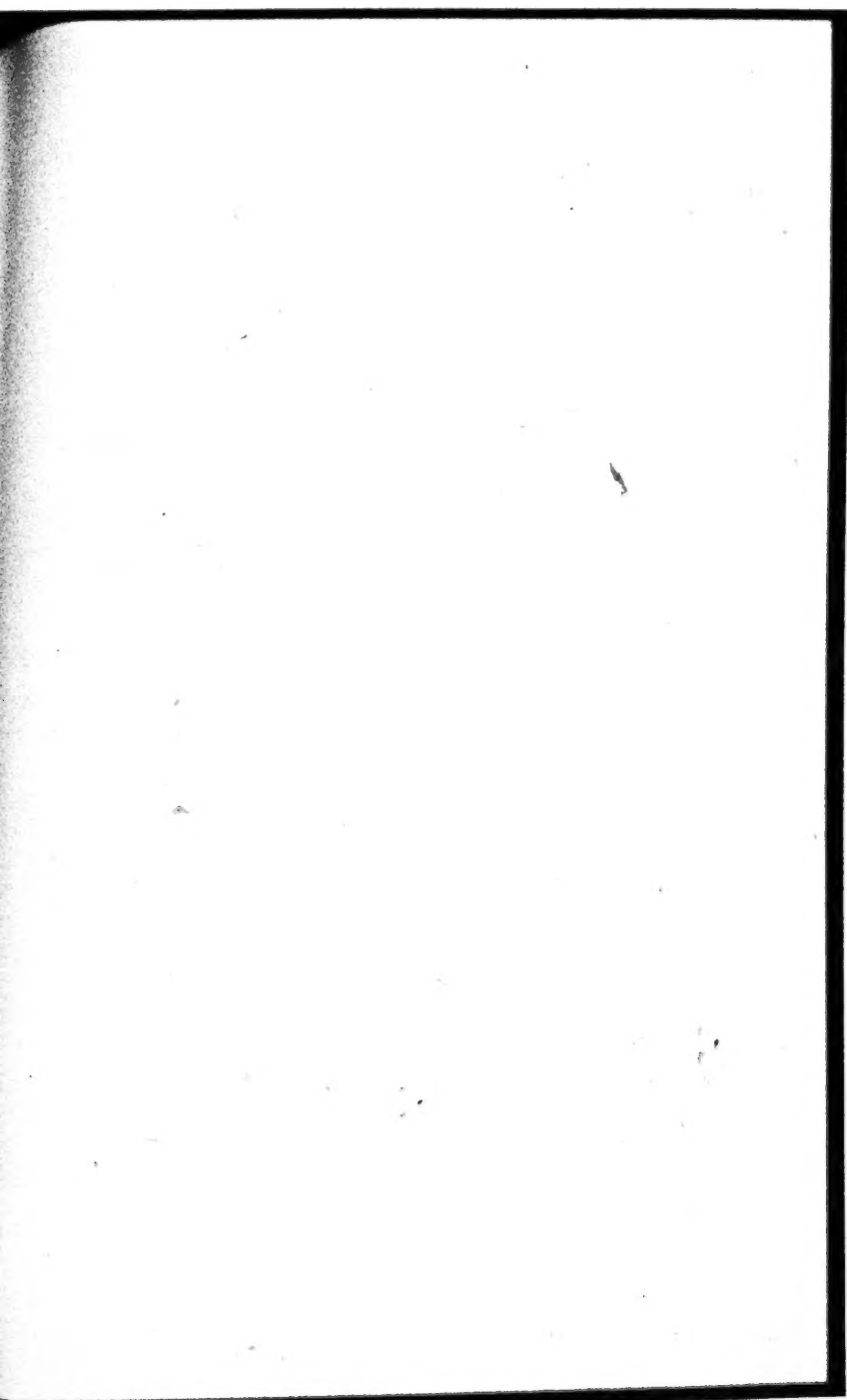
Wherefore plaintiffs pray judgment as follows:

1. That the Court enter its Order declaring that these proceedings are, and may be maintained as, a class action;
2. That the Court find, adjudge and decree that defendants, and each of them, have discriminated against plaintiffs and members of the class on the basis of their race, religion and/or national origin in connection with the offer or rental of apartments at Parkmerced;
3. That the Court award plaintiffs and members of the class compensatory damages according to their proof at trial and punitive damages as may be just and proper;
4. That the Court order defendants to offer to plaintiffs and other members of the class dwellings on the same terms and conditions as dwellings were offered to white persons at the time of discrimination by defendants against plaintiffs and members of the class;
5. That the Court enjoin defendants from discriminating against plaintiffs and members of the class in connection with the offer or rental of dwellings at Parkmerced and require defendants to take all action necessary to correct the effects of prior discrimination;
6. That plaintiffs be awarded their costs of suit and a reasonable attorneys fee, as provided by law; and
7. For such other and further relief as to this Court may appear proper.

Dated February 25, 1971.

George H. Clyde, Jr.  
Stephen V. Bomse  
Margaret D. Brown





(Slip Opinion)

NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 327.

## SUPREME COURT OF THE UNITED STATES

### Syllabus

#### TRAFFICANTE ET AL. v. METROPOLITAN LIFE INSURANCE CO. ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE NINTH CIRCUIT

No. 71-708. Argued November 7, 1972—Decided December 7, 1972

Two tenants of an apartment complex filed complaints with the Secretary of Housing and Urban Development alleging that their landlord racially discriminated against nonwhites, that the tenants thereby lost the social benefits of living in an integrated community, missed business and professional advantages that would have accrued from living with members of minority groups, and suffered from being "stigmatised" as residents of a "white ghetto." The District Court, not reaching the merits, held that the complaining tenants were not within the class of persons entitled to sue under § 810 (a) of the Civil Rights Act of 1968. The Court of Appeals, in affirming, construed § 810 (a) to permit complaints only by persons who are the objects of discriminatory housing practices. *Held*: The definition in § 810 (a) of "persons aggrieved," as "any person who claims to have been injured by a discriminatory housing practice," shows a congressional intention to define standing as broadly as is permitted by Article III of the Constitution, and petitioners, being tenants of the apartment complex, have standing to sue under § 810 (a). Pp. 3-7.

446 F. 2d 1158, reversed.

DOUGLAS, J., delivered the opinion of the Court, in which BURGER, C. J., and BRENNAN, STEWART, WHITE, MARSHALL, POWELL, and REHNQUIST, JJ., joined. WHITE, J., filed an opinion concurring and joining the Court's opinion and judgment, in which BLACKMUN and POWELL, JJ., joined.

of  
Hops  
from  
this  
year

**T9**

UNITED STATES COURT OF THE UNITED STATES

39

[illegible][illegible]

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

# SUPREME COURT OF THE UNITED STATES

No. 71-708

Paul J. Trafficante et al.,  
Petitioners,  
v.  
Metropolitan Life Insurance Company et al.

On Writ of Certiorari to the  
United States Court of Appeals  
for the Ninth Circuit.

[December 7, 1972]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Two tenants of Parkmerced, an apartment complex in San Francisco, housing about 8,200 residents, filed separate complaints with the Secretary of Housing and Urban Development (HUD) pursuant to § 810 (a) <sup>1</sup> of the Civil Rights Act of 1968. 42 U. S. C. § 3610. One tenant is

<sup>1</sup> Section 810 (a) of the Act provides in relevant part:

"Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter 'person aggrieved') may file a complaint with the Secretary. Complaints shall be in writing and shall contain such information and be in such form as the Secretary requires. Upon receipt of such a complaint the Secretary shall furnish a copy of the same to the person who allegedly committed or are about to commit the alleged discriminatory housing practice. Within thirty days after receiving a complaint, or within thirty days after the expiration of any period of reference under subsection (c) of this section, the secretary shall investigate the complaint and give notice in writing to the person aggrieved whether he intends to resolve it. If the Secretary decides to resolve the complaint, he shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion."

black, one white. Each alleged that the owner<sup>2</sup> of Parkmerced had discriminated against non-whites on the basis of race in the rental of apartments within the complex in violation of § 804 of the Act.

HUD, pursuant to § 810 (c) of the Act,<sup>3</sup> notified the appropriate California state agency of the complaints and the state agency, for lack of adequate resources to handle the complaints, referred the charge back to HUD. Since HUD failed to secure voluntary compliance within 30 days, petitioners brought this action in the District Court under § 810 (d) of the Act.<sup>4</sup>

<sup>2</sup> The owner at the time the suit was started was Metropolitan Life Ins. Co. After the suit was commenced, Parkmerced Corp. acquired the apartment complex from Metropolitan and it was joined as a defendant.

<sup>3</sup> Sec. 810 (c) provides:

"Wherever a State or local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this subchapter, the Secretary shall notify the appropriate State or local agency of any complaint filed under this subchapter which appears to constitute a violation of such State or local fair housing law, and the Secretary shall take no further action with respect to such complaint if the appropriate State or local law enforcement official has, within thirty days from the date the alleged offense has been brought to his attention, commenced proceedings in the matter, or, having done so, carries forward such proceedings with reasonable promptness. In no event shall the Secretary take further action unless he certifies that in his judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action.

<sup>4</sup> Sec. 810 (d) provides in relevant part:

"If within thirty days after a complaint is filed with the Secretary or within thirty days after expiration of any period of reference under subsection (c) of this section, the Secretary has been unable to obtain voluntary compliance with this subchapter, the person aggrieved may, within thirty days thereafter, commence a civil action in any appropriate United States district court, against the

The complaint alleged that the owner had discriminated against non-white rental applicants in numerous ways, *s. g.*, making it known to them that they would not be welcome at Parkmerced, manipulating the waiting list for apartments, delaying action on their applications, using discriminatory acceptance standards, and the like.

They—the two tenants—claimed they had been injured in that (1) they had lost the social benefits of living in an integrated community; (2) they had missed business and professional advantages which would have accrued if they had lived with members of minority groups; (3) they had suffered embarrassment and economic damage in social, business, and professional activities from being “stigmatized” as residents of a “white ghetto.”\*

The District Court did not reach the merits but only held that petitioners were not within the class of persons entitled to sue under the Act. 322 F. Supp. 352. The Court of Appeals affirmed, construing § 810 (a) narrowly to permit complaints only by persons who are the objects of discriminatory housing practices. 446 F. 2d 1158. The case is here on a petition for a writ of certiorari which we granted, 407 U. S. —. We reverse the judgment below.

The definition of “persons aggrieved” contained in § 810 (a)\* is in terms broad, as it is defined as “any person who claims to have been injured by a discriminatory housing practice.”

respondent named in the complaint, to enforce the rights granted or protected by this subchapter, insofar as such rights relate to the subject of the complaint.

\* Less than 1% of the tenants in this apartment complex are Black.

\* Note 3, *supra*.

The Act gives the Secretary of HUD power to receive and investigate complaints regarding discriminatory housing practices. The Secretary, however, must defer to state agencies that can provide relief against the named practice. If the state agency does not act, the Secretary may seek to resolve the controversy by conference, conciliation, or persuasion. If these attempts fail, the complainant may proceed to court pursuant to § 810 (d).<sup>1</sup> Moreover, these rights may be enforced "by civil actions in appropriate United States district courts without regard to the amount in controversy," if brought within 180 days "after the alleged discriminatory housing practice occurred." § 812 (a). In addition, § 813 gives the Attorney General authority to bring a civil action in any appropriate United States district court when he has reasonable cause to believe "that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted" by the Act.

It is apparent, as the Solicitor General says, that complaints by private persons are the primary method of obtaining compliance with the Act. *Hackett v McGuire Bros. Inc.*, 445 F. 2d 442, which dealt with the phrase that allowed a suit to be started "by the person claiming to be aggrieved" under the Civil Rights Act of 1964, 42 U. S. C. § 2000d-5 (e), concluded that the words used showed "a congressional intention to define standing as broadly as is permitted by Article III of the Constitution." *Id.*, at 446. With respect to suits brought under the 1968 Act,<sup>2</sup> we reach the same conclusion, insofar as tenants of the

<sup>1</sup> Note 4, *supra*.

<sup>2</sup> We find it unnecessary to reach the question of standing to sue under 42 U. S. C. § 1982 which is the basis of the third cause of action alleged in the petition but based on the same allegations as those made under the Civil Rights Act of 1968.



same housing unit that is charged with discrimination are concerned.

The language of the Act is broad and inclusive. Individual injury or injury in fact to petitioners, the ingredient found missing in *Sierra Club v. Morton*, 407 U. S. —, is alleged here. What the proof may be is one thing; the alleged injury to existing tenants by exclusion of minority persons from the apartment complex is the loss of important benefits from interracial associations.

The legislative history of the Act is not too helpful. The key section now before us, i. e., § 810, was derived from an amendment offered by Senator Mondale and incorporated in the bill offered by Senator Dirksen.<sup>9</sup> While members of minority groups were damaged the most from discrimination in housing practices, the proponents of the legislation emphasized that those who were not the direct objects of discrimination had an interest in ensuring fair housing, as they too suffered.<sup>10</sup>

The Assistant Regional Administrator for HUD wrote petitioners' counsel on November 5, 1970, that "it is the determination of this office that the complainants are aggrieved persons and as such are within the jurisdiction" of the Act. We are told that that is the consistent administrative construction of the Act. Such construction is entitled to great weight. *Udall v. Tollman*, 380 U. S. 1, 16; *Griggs v. Duke Power Co.*, 401 U. S. 424, 433-434.

<sup>9</sup> The Dirksen substitute, 114 Cong. Rec. 4570-4573 retained the present language of § 810 (a) which Senator Mondale had previously introduced, 114 Cong. Rec. 2270, and it was in the bill passed by the Senate, 114 Cong. 5992, and which the House subsequently passed, 114 Cong. Rec. 9621.

The aggrieved person provision that was in Senator Mondale's bill and carried into the Dirksen bill can be found at 114 Cong. 2271 (511 (a) of the Mondale bill).

<sup>10</sup> See hearings before the Subcommittee on Housing and Urban Affairs of the Senate Committee on Banking and Currency on S. 1358, S. 2114, and S. 2280, 90th Cong., 1st Sess. (1967).

The design of the Act confirms this construction. HUD has no power of enforcement. So far as federal agencies are concerned only the Attorney General may sue; yet, as noted, he may sue only to correct "patterns and practices" of housing discrimination. That phrase "patterns and practices" creates some limiting factors in his authority which we need not stop to analyze. For as the Solicitor General points out, most of the fair housing litigation conducted by the Attorney General is handled by the Housing Section of the Civil Rights division which has less than two dozen lawyers. Since HUD has no enforcement powers and since the enormity of the task of assuring fair housing makes the role of the Attorney General in the matter minimal, the main generating force must be private suits in which, the Solicitor General says, the complainants act not only on their own behalf but also "as private attorney general in vindicating a policy that Congress considered to be of the highest priority." The role of "private attorneys general" is not uncommon in modern legislative programs. See *Newman v. Piggie Park Enterprises*, 390 U. S. 400, 402; *Allen v. State Board*, 393 U. S. 544, 556; *Perkins v. Mathews*, 400 U. S. 379, 396; *J. I. Case Co. v. Borak*, 377 U. S. 426, 432. It serves an important role in this part of the Civil Rights Act of 1968 in protecting not only those against whom a discrimination is directed but also those whose complaint is that the manner of managing a housing project affects "the very quality of their daily lives." *Shannon v. Dept. of Housing & Urban Dev.*, 436 F. 2d 89, 818.

The dispute tendered by this complaint is presented in an adversary context. *Flast v. Cohen*, 392 U. S. 93, 101. Injury is alleged with particularity, so there is not present the abstract question raising problems under Art. III of the Constitution. The person on the landlord's blacklist is not the only victim of discriminatory housing

practices; it is, as Senator Javits said in supporting the bill, "the whole community," 114 Cong. Rec. 2706, and as Senator Mondale who drafted § 810 (a) said, the reach of the proposed law was to replace the ghettos "by truly integrated and balanced living quarters." 114 Cong. Rec. 3472.

—We can give vitality to § 810 (a) only by a generous construction which gives standing to sue to all in the same housing unit who are injured by racial discrimination in the management of those facilities under the auspices of HUD.

We reverse and remand the case to the District Court, leaving untouched all other questions, including the suggestion that the case against Metropolitan Life Insurance Co. has become moot.

*Reversed.*

[illegible][illegible]

# SUPREME COURT OF THE UNITED STATES

No. 71-708

Paul J. Trafficante et al.,  
Petitioners,  
v.  
Metropolitan Life Insurance Company et al.

On Writ of Certiorari to the  
United States Court of Appeals  
for the Ninth Circuit.

[December 7, 1972]

MR. JUSTICE WHITE, with whom MR. JUSTICE BLACKMUN and MR. JUSTICE POWELL join, concurring.

Absent the Civil Rights Act of 1968, I would have great difficulty in concluding that petitioners' complaint in this case presented a case or controversy within the jurisdiction of the District Court under Art. III of the Constitution. But with that statute purporting to give all those who are authorized to complain to the agency the right also to sue in court, I would sustain the statute insofar as it extends standing to those in the position of the petitioners in this case. Cf. *Katzenbach v. Morgan*, 384 U. S. 641, 648-649 (1966); *Oregon v. Mitchell*, 400 U. S. 112, 240, 248-249 (1970). Consequently, I join the Court's opinion and judgment.